



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, सोमवार, 28 अक्टूबर, 2013/6 कार्तिक, 1935

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हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Shimla-2, the 14<sup>th</sup> October, 2013*

**No. Sharm (A) 7-1/2005 (Awards) L-D/Shala.**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh :

Sr. No.	Case No.	Title of the Case			Date of Award
1.	132/2012	S/Shri Brij Bhushan	VS	E.E.I&P.H. Padhar.	1/8/2013
2.	133/2012	Rajmal	V/s	-do-	1/8/2013
3.	135/2012	Diman Singh	V/S	-do-	1/8/2013
4.	137/2012	Sher Singh	V/S	-do-	1/8/2013
5.	138/2012	Dhani Ram	V/s	-do-	1/8/2013
6.	319/2012	Tilak Raj	V/s	E.E. HPPWD, Killar.	2/8/2013
7.	201/2010	Parveen Kumar	V/s	Mandi Urban Co-Opt. Bank.	3/8/2013
8.	204/2010	Manish Kapoor	V/s	-do-	3/8/2013
9.	205/2010	Sanjeev Kapoor	V/s	-do-	3/8/2013
10.	206/2010	Madhu Malhotra	V/s	-do-	3/8/2013
11.	268/2010	Shanti Devi	V/s	D.F.O. Karsog.	3/8/2013
12.	196/2010	Sanjay Thakur	V/s	Secy. Distt. Red Cross.	3/8/2013
13.	140/2011	Rajesh Kumar	V/s	A.S.E. HPSEB, J/Nagar.	3/8/2013
14.	171/2010	Budh Ram	V/s	Registrar Dr. Y.S. Parmar.	3/8/2013
15.	350/2012	Dhamendar	V/s	E.E. HPPWD, J/Nagar.	3/8/2013
16.	340/2012	Raj Kumar	V/s	-do-	3/8/2013
17.	67/2012	Sohan Singh	V/s	E.E. HPPWD, Dharampur.	5/8/2013
18.	323/2012	Kanta Devi	V/s	E.E.E.E. HPPWD, J/Nagar	6/8/2013
19.	286/2012	Mohit Singh	V/s	M.D. M/s Ayushi Steel Inds.	6/8/2013
20.	296/2012	Madan Kumar	V/S	M.D. H.P. Financial.	7/8/2013
21.	299/2012	Amar Singh	V/s	E.E. HPPWD, Baijnath.	7/8/2013
22.	298/2012	Surinder Kumar	V/s	-do-	7/8/2013
23.	250/2012	Bajro	V/s	D.F.O. Chamba.	8/8/2013
24.	334/2009	Karnail Singh	V/s	E.E.I&PH Dalhousie.	12/8/2013
25.	335/2009	Fozi	V/s	-do-	12/8/2013
26.	336/2009	Bhuri Singh	V/s	-do-	12/8/2013
27.	386/2009	Netar Singh	V/s	-do-	12/8/2013
28.	404/2009	Madan Singh	V/s	-do-	12/8/2013
29.	406/2009	Gagan Singh	V/s	-do-	12/8/2013
30.	407/2009	Thakur	V/s	-do-	12/8/2013
31.	408/2009	Shankar Lal	V/s	-do-	12/8/2013
32.	491/2009	Krishan Kumar	V/s	-do-	12/8/2013
33.	257/2012	Kamar Singh	V/s	E.E. HPPWD, Dharampur.	17-08-2013
34.	258/2012	Baktabar Khan	V/s	-do-	17-08-2013
35.	40/2012	Sanjay Kumar	V/s	-do-	17-08-2013
36.	20/2011	Rajesh Rana	V/s	M.D. Himalayan Ski.	19-08-2013
37.	26/2011	Charan Dass	V/s	M.D. Himalayan Ski.	19-08-2013
38.	22/2011	Amarjeet	V/s	-do-	19-08-2013
39.	14/2011	Eenam Thakur	V/s	-do-	19-08-2013

Sr. No.	Case No.	Title of the Case	Date of Award
40.	274/2012	Rajesh Kumar V/s D.F.O. Sunder Nagar.	20-08-2013
41.	28/2010	Gen. Secy. Small scale V/s M.D. H.P. Gen Industries.	22-08-2013
42.	76/2011	Chamel Singh V/s Dir.Horticulture Shimla.	26-08-2013
43.	301/2012	Kewal Singh V/s Principal D.A.V. Sr. Sec. School.	29-08-2013
44.	302/2012	Sandeep Mankotia V/s -do-	29-08-2013
45.	303/2012	Vijay Kumar V/s -do-	29-08-2013
46.	287/2012	Uttam Singh V/s Area Manager, H.P. State Civil.	29-08-2013

By order,  
UPMA CHADUHARY,  
*Pr. Secretary ( Labour & Employment).*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 299/2012  
Date of Institution : 02.08.2012  
Date of Decision : 07.08.2013

Shri Amar Singh s/o Shri Lachhiya Ram, r/o Village Nanahar, P.O. Kandwari, Tehsil Palampur, Distt. Kangra, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Baijnath, District Kangra, H.P. ....*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Amar Singh S/O Sh. Lachhiya Ram, R/O Village-Nanahar, P.O. Kandwari, Tehsil Palampur, Distt. Kangra, H.P.by the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, from time to time during 2001 to 2007, without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent in the month of August, 2001. No appointment letter/order was issued in his name by the respondent/department. Sometimes the muster roll for the whole month was issued in his (petitioner's) favour and on the expiry of the said month his services were terminated by the respondent without any written order. This practice continued up-to the month of September, 2007. The breaks were given by the respondent from time to time so that he does not complete 240 days of work for the purpose of the regularization of his services as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). At the time of his disengagement after every one month, works and funds were available with the respondent/department. The persons junior to him (petitioner) were retained in service by the respondent and they worked continuously. The names of the juniors are Shri Lakhwinder Singh and Smt. Kanta Devi etc. His (petitioner's) seniority was ignored by the respondent and the muster rolls were not issued in his name continuously by the respondent/department. During the period of his disengagement, he was not gainfully employed. The services of the persons junior to him, who were not given the intentional breaks have already been regularized by the respondent after completion of eight years of service. He (petitioner) is also entitled to the regularization of his services in the regular pay scale from the date of the regularization of the services of his juniors alongwith the consequential service benefits. A similar case pertaining to the same Division instituted by the workman Shri Suresh Kumar bearing Reference No.23/2010 has already been decided in favour of the labourer by this Court per Award dated 28.11.2011. It was held by this Court that the breaks in service given by the respondent to Shri Suresh Kumar were fictional in nature and the same will have no effect on his seniority and continuity in service. It was also ordered by this Court that the seniority of Shri Suresh Kumar shall be reckoned from the date of his initial appointment. The break period is required to be counted as continuous service. The respondent indulged in unfair labour practice as well as contravened the provisions of Sections 25-F and 25-G of the Act. Demand notice dated 10.6.2010 was served upon the respondent by him (petitioner), but in vain.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “i) The Hon'ble Court may kindly be set aside the illegal break period of applicant from year 2001 to 2007 and directed to respondent to condone the breaks period in continuity of service of applicant.
- ii) The Hon'ble Court may kindly be again directed to respondent to pay the back wages of breaks period along with interest @ 12% per annum.
- iii) The Hon'ble Court further directed to respondent to consider the case of applicant for regularization as per the seniority of applicant after completion of 8 years or from the date of his junior have been regularized in the regular pay scale Rs.4900-10680/- + grade pay and usual allowances as applicable to similar situated employees of the state government from time to time and also pay the arrears to the applicant from the date of his regularization to onwards.
- iv) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh and the Executive

Engineer, HPPWD, National Highway Division, Joginder Nagar are necessary parties to the petition. They have not been joined as parties/respondents because of which the petition is bad for non-joinder of the necessary parties. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the employer employee relationship exists between the parties *i.e.* the petitioner and the respondent/PWD Department. However, it has been pleaded that the services of the petitioner were initially engaged in the year 1999 *i.e.* on 15.4.1999 by the Executive Engineer, National Highway Division HPPWD, Joginder Nagar. On account of the surplus labour in the National Highway Division, the petitioner was transferred to his (respondent's) office in the month of November, 2004. Since then, the petitioner is working under him (respondent). No artificial/fictional breaks were provided to the petitioner at any point of time. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when he came present muster rolls for the whole month were issued in his favour. Shri Lakhwinder Singh etc. are senior to the petitioner. Moreover, from the very beginning they are serving under him (respondent). No dispute regarding the intentional breaks, if any, was raised by the petitioner at the relevant time. With the passage of time the industrial dispute has become stale and faded away. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been violated. He had no intention to deprive the petitioner from working in continuity. As and when he (petitioner) reported for duty, his services were duly engaged. The facts of Reference No. 23/2010 are/were different than the instant case. The Award dated 28.11.2011 cannot be used as a precedent. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) has not been given the breaks in service by the respondent w.e.f. 01.1.2008. He is working continuously from that date. In Reference No. 110/2006 decided on 02.11.2010 titled as Him Shakti PWD Karamchari Sangh v/s Executive Engineer, HPPWD, Division (B&R), Joginder Nagar, it has been already held by this Court that the State of Himachal Pradesh or the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the lis.

5. Per order dated 04.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the years 2001 to 2007 is illegal and unjustified as alleged? ..*OPP*
2. Whether the petition is not maintainable in the present form? ..*OPR*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..*OPR*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Amar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that initially his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. Subsequently, being surplus he was transferred in the month of November, 2004 to the HPPWD (B&R) Division, Baijnath. He denied that he used to work as per his sweet will and convenience as well as fictional breaks were not provided to him by the respondent/department. He also denied that he has instituted a phoney petition to harass his opponent.

9. Conversely, Shri J.S. Guleria, Executive Engineer, HPPWD (B&R) Division, Baijnath (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were given to the petitioner from time to time so that he does not complete 240 days of continuous service. He also denied that the workmen junior to the petitioner whose names figure in the list Ex. RW1/B, completed 240 days of work earlier to him. He admitted that as per the record no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the mandays chart pertaining to Shri Harbans Lal and six other daily wagers working under the respondent.

13. Ex. RW1/C is the copy of the reply submitted by the respondent before the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2A/2K of the Act.

14. It is the admitted case of the parties that the services of the petitioner were initially engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. The petitioner was transferred in the month of November, 2004 from the National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Baijnath being surplus. There is no denial of the fact that the petitioner is still serving the respondent/department.

15. The mandays chart Ex. RW1/A is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged by the respondent/department on 01.08.2001.

16. The version of the petitioner is that from the date of his initial engagement to August/September, 2007 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. As and when the petitioner reported for duty, his services were duly engaged and the muster roll was issued in his name.

17. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

18. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

19. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

20. Now comes the all important question as to whether artificial/fictional breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the affirmative. The mandays chart Ex. RW1/A clarifies that from the date of his initial engagement to 31.8.2007, work for all the months was not provided to the petitioner by the respondent. The muster roll used to be issued for an entire month in the name of the petitioner and in the next month no muster roll was issued in his favour by the respondent/department. If the petitioner used to willfully remain absent from duties from time to time (as alleged), then why no show cause notice was issued to him by the respondent and why no disciplinary proceedings were initiated against the petitioner by the respondent/employer? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The mandays chart Ex. RW1/B pertaining to Shri Harbans Lal and others unfolds that the persons junior to the petitioner were provided the work for 240 days or more by the respondent in a block of 12 calendar months. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster rolls to the workman for at least 240 days in a calendar year or after the gap of a month/months due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 5

23. Not pressed.

ISSUE NO. 3

24. Taking into account my findings on the issue No.1 above, it is held that the State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the petition. They may be the proper parties.



24A. This issue too is decided in favour of the petitioner.

#### ISSUE NO. 4

25. Reference No. 41/2001 (RBT No. 403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

27. This issue is also decided in favour of the petitioner and against the respondent.

#### RELIEF

#### (ISSUE NO. 6)

28. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room. Announced in the open Court today this 7th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 22/2011

Date of Institution : 31.03.2011

Date of Decision : 19.08.2013

Shri Amarjeet s/o Shri Bir Singh, r/o Village Jarad, P.O. Mohal, Tehsil & Distt. Kullu, H.P.  
....*Petitioner.*

*Versus*

1. Sh. John Sims, Managing Director, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P.
2. Sh. Ajay Dabra, Director, Corporate Affairs, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P. ....*Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Kamal Kishore, Adv.  
: Miss Rajni Chauhan, Adv.

For the Respondent(s) : Sh. Jitender Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Amarjeet S/O Sh. Bir Singh, Field Assistant by the management of Himalayan Ski village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P. we.f. 16.12.2009 without serving charge sheet, without conducting enquiry and without following the mandatory provisions of the Industrial Disputes Act, 1947, inspite of retainership letter dated-nil, issued by the management, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from above management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that an interview was conducted by the respondents in which he participated. He was selected, whereafter, the appointment letter dated 1st June, 2007 was issued in his favour by the respondents. He joined the service. As per clause 10 of the appointment letter, on completion of the probation period of six months, his services were regularized by the company/respondents vide confirmation letter dated 1st December, 2007. His (petitioner's) commitment for the company was appreciated. He continuously worked with the respondents up-to December, 2009 as Field Assistant (Mountain Sports Division), Manali, District Kullu. He completed 240 days of work in each and every calendar year of his employment. During the service tenure, his work and conduct was excellent. Neither any explanation was called for nor any show cause notice/warning letter etc. was issued to him. On 16th December, 2009, his services were terminated by the respondents wrongly and illegally by adopting the principle of hire and fire. Before the termination of his services, neither he was chargesheeted nor an inquiry was conducted against him. He was not given an opportunity of being heard. No notice was given to him before the termination of his services. Wages in lieu of the

notice period and the retrenchment compensation were also not paid to him. Not only this, the respondents did not obtain necessary prior approval from the appropriate Government to retrench his services. On December 16, 2009, he (petitioner) was forcibly and arbitrarily refused the entry in the premises of the registered office of the company. The entry was blocked to discontinue his services in violation of the terms and conditions of the appointment letter dated 1st June, 2007. He was not paid the salary or stipend for the regular employment. He was kept idle for the unexplained reasons. For the last six months, the respondents have not paid any salary to him. He kept on visiting the office of the respondents time and again for re-employment and payment of his dues, but in vain. The respondents have violated the terms of the contract. From the date of his disengagement, he (petitioner) is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The respondents indulged in unfair labour practice. He is struggling hard to maintain himself and his dependants. A demand notice under Section 2-A of the Act was served upon the respondents by him, but of no avail.

As such, he (petitioner) prays that the verbal retrenchment order dated 16.12.2009 passed by the respondents be upset. The latter be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.2 filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable as the project Himalayan Ski Village proposed to be started at Manali was not allowed to start by the Government of Himachal Pradesh. The project is standstill. The claim of the petitioner is not sustainable in the eyes of law in view of the acceptance of letter No.HSV/KV/Retainer/014 by him. He (petitioner) has suppressed the material facts from the Court and has not come to the Court with clean hands. The petitioner has no locus standi to sue. He has no cause of action. The petition is bad in the eyes of law.

On merits, it has been owned that the services of the petitioner were engaged vide letter dated 1st June, 2007. He was initially appointed with probation of six months. The petitioner did not work up-to 16th December, 2009 as claimed. Actually, the petitioner was not in the employment of the company after 31.5.2009. In May 2009, he was offered the retainer-ship per letter No. HSV/KV/Retainer/014. The retainer-ship was accepted by the petitioner and other workmen. Now the petitioner cannot change his stance. On accepting the retainer-ship, the petitioner never attended the office after 31.5.2009. He cannot take advantage of his own lapse. After accepting the retainer-ship, the petitioner left the company of his own. He did not complete 240 days of work in any calendar year of his engagement as claimed. The services of the petitioner were never terminated in the manner as alleged by him. Due to the circumstances beyond their control, they (respondents) were forced not to start the project by the Government of Himachal Pradesh. The company was served a show cause notice for cancellation of the project by the Himachal Pradesh Government. It (company) had to approach the Hon'ble High Court of Himachal Pradesh against the show cause notice. The Hon'ble High Court passed an interim order against the cancellation of the project which continues till date. In the best interest of the petitioner and others, all the employees were given six months retainer-ship which started w.e.f. 01.6.2009. The letters qua the retainer-ship were accepted by all the employees (including the petitioner). It has been denied that a demand notice was issued by the petitioner. The management was forced to close the project due to negative approach of the Himachal Pradesh Government. Ultimately, the termination of the services of the petitioner was done and took place due to the circumstances created by the Government of Himachal Pradesh. The management had only handful employees. There was no need to get approval of the appropriate Government for the disengagement of their services. The provisions of Section 25-N of the Act are not attracted in this case. The petitioner was never refused entry into the office as claimed. He in-fact never visited the office after 31.5.2009. Since

there was no work due to the forced closure of the project, the company was left with no option, but to disengage the services of the workmen. After offering the retainer-ship to the petitioner and other workmen for six months starting from 01.6.2009, the position remained the same. The company was left with no option except not to give any further retainer-ship to any of the employee. The petitioner was duly informed about the condition/circumstances prevailing in the company. Due to the dead lock with the Government, they (respondents) were forced to close the operation of the project. The petitioner is still persisting for the continuous work knowing well that no work at all is available with them (respondents). No provision of the Act has been infringed. The alleged disengagement of the services of the petitioner cannot be termed as retrenchment. The petition is meritless. The petitioner is not entitled to any relief. The project stands closed.

In these circumstances, the answering respondent No. 2 prays that the petition in hand be dismissed.

4. The reply submitted by the respondent No.2 has been adopted by the other respondent viz. respondent No.1.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that he ever accepted and signed the retainer-ship agreement. He never left the company of his own. He cannot be held responsible for the closure of the project. The respondents cannot shun their responsibilities by resorting to the unfair means. Alleged closing down of the project is a matter between the respondents and the Himachal Pradesh Government. The retainer-ship letter is denied for want of knowledge.

6. Per order dated 07.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 is illegal and unjustified as alleged? ..*OPP*
2. Whether the petitioner has a cause of action? ..*OPP*
3. Whether the petitioner has locus-standi to sue? ..*OPP*
4. Whether the petition is not maintainable in the present form? ..*OPR*
5. Whether the petitioner has not come to the Court with clean hands.  
If so, its effect? ..*OPR*
6. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? ..*OPR*
7. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No  
Issue No. 2 : No  
Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Yes

Issue No. 6 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. Shri Amarjeet (petitioner) stepped into the witness box as PW2. In his affidavit Ex. PW2/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that the work of the project is totally closed from the month of February, 2008 onwards. He feigned ignorance about the fact that despite the closure of the project the respondents gave him the pay up-to the month of May, 2009 without doing any work. He denied that when the situation did not improve, the respondents kept him as a retainer for six months vide retainer-ship letter Ex. R3. Such letter does not bear his signatures. He denied that after June 2009, he is working somewhere else. He also denied that out of the greed and to gain the employment in a wrongful manner, he has instituted a phoney petition.

10. Shri Rajesh Rana (PW3) who is the petitioner in a similar reference bearing No.20/2011, supported the cause of the petitioner. Ex. PW3/A is the affidavit filed by him in terms of Order 18 Rule 4 CPC.

In the cross-examination, he admitted that presently no field assistant is working with the respondents. He also admitted that the project is lying closed from the month of February, 2008 onwards. He denied that to help his companion, he has given a wrong statement.

11. Shri Amar Nath Dhiman (PW1) is Labour Inspector, Kullu. He brought the requisitioned record and deposed that a demand notice was issued by the petitioner. Copy of the demand notice was received in his (PW1's) office. He called the parties and tried to get the dispute resolved amicably. Mandays chart Ex. PW1/A was produced by the respondents during the conciliation proceedings.

In the cross-examination, he stated that the copies of various letters viz. Exs. R1 to R3 were also produced by the respondents at the time of the conciliation. He admitted that in all 15 workmen had raised the industrial dispute. 11 workmen withdrew their cases. The project is lying closed.

12. Conversely, Shri Ajay Dabra (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongly.

13. Ex. PW2/B is the copy of the appointment letter dated 1st June, 2007 issued in favour of the petitioner by the respondents. It bears the signatures of Shri Ajay Dabra (respondent No. 2).

14. Ex. PW2/C is the copy of the letter dated 01.12.2007 written to the petitioner by the respondents. It reveals that on successful completion of the probation period as per appointment letter dated 01.6.2007, the services of the petitioner were confirmed w.e.f. 01.12.2007.

15. Ex. PW2/D is the copy of the demand notice dated 17<sup>th</sup> December, 2009 served upon the respondents by the petitioner under Section 2-A of the Act.

16. Ex. R1 is the copy of a letter dated 01.12.2009 written by all the 15 Field Assistants (including the petitioner) to the respondent No. 2. In this letter, it was mentioned that the retainer-ship period of six months has come to an end on 30.11.2009. All the 15 Field Assistants are present today i.e. on 01.12.2009. The company should inform them as to what is the status of their employment from 01.12.2009 onwards. They be also intimated as to what is the status of their retainer-ship for the last six months and when the retainer-ship amount will be paid to them.

17. Ex. R2 is another letter dated 08.12.2009 written by all the Field Assistants to the respondent No. 2 in continuation of the letter dated 01.12.2009 (Ex. R1). In Ex. R2, it was mentioned that the queries raised by them per letter Ex. R1 have not been replied. They (workmen) are approaching the Labour Court for the redressal of their grievances.

18. Ex. R3 is the copy of letter No.HSV/KV/Retainer/014 written to the petitioner by the respondent No.1. It clarifies that because of the closure of the project, the company expressed its inability to keep the employees. The petitioner was offered retainer-ship from 1st June, 2009 onwards for a period of six months. It is/was mentioned in the letter that at the end of the six months period, the company shall review the situation and decide if this retainer-ship can be continued or not. The retainer amount of the petitioner was fixed as Rs. 2,000/- per month beginning June 1, 2009. This letter of retainer-ship bears the signatures of the petitioner as a token of its acceptance.

19. Ex. R4 is the no dues/clearance certificate which was produced by the petitioner on 15.6.2009 before the respondents. In this certificate, a mention has been made that the individual is on retainer-ship.

20. Ex. R5 is the copy of the letter dated 15.12.2009 written by the respondent No.1 to the petitioner. Vide this letter, the petitioner was informed that his retainer-ship cannot be renewed further as no work is available. In the letter, it was also highlighted that the payment of last six months retainer-ship fee will be the last payment until HSV (Himalayan Ski Village) is allowed to proceed by the State of Himachal Pradesh.

21. Ex. R6 is the copy of the postal receipt. It evidences that the letter Ex. R5 was sent to the petitioner under registered cover.

22. Exts. R7 to R17 are the copies of the deeds of settlement dated 24th day of March, 2011 which were entered into between the 11 Field Assistants namely S/Sh. Singhi Ram and Kewal Ram etc. as well as the respondents.

23. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. Thus, as per the reference/notification issued by the appropriate Government, this Court is required to decide as to whether the verbal termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 in spite of the issuance of the retainer-ship letter by the management (respondents) is legal and justified or not?

24. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondents in contravention of the provisions of Section 9-A of the Act.

25. It is often said and rightly too that the men may tell lies, but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight.

26. It is the admitted case of the parties that the services of the petitioner were engaged as a Field Assistant. Appointment letter dated 1<sup>st</sup> June, 2007 (Ex. PW2/B) was issued in his favour. It is also an admitted fact that on the completion of the probation period of six months, the services of the petitioner were confirmed by the respondents per letter dated 1<sup>st</sup> December, 2007 (Ex. PW2/C).

27. From the evidence available on the record, it can be gathered that some dispute arose between the respondents/company and the Government of Himachal Pradesh because of which the work of the project (Himalayan Ski Village) came to a standstill somewhere in the beginning of the year 2008. Due to this reason, the company was not in a position to retain all the workmen. Despite the non availability of the work the petitioner remained on the rolls of the respondents up-to 31.5.2009 and was paid the wages/salary as per the appointment letter Ex. PW2/B. From 1st June, 2009, the petitioner was kept as a retainer on payment of the retainer- ship fee of Rs. 2000/- every month per letter Ex. R3. The retainership period was of six months beginning 01.6.2009. As already mentioned Ex. R3 bears the signatures of the petitioner. It is well known that a person signing a document is presumed to agree to its contents. True it is that the petitioner has denied his signatures on Ex. R3. It appears to me that false stand has been taken by the petitioner with an ulterior motive taking into account the other evidence available on the file.

28. As mentioned earlier, clearance/no dues certificate dated 15.6.2009, the copy of which is Ex. R4, was submitted by the petitioner. It too, bears his signatures. In this certificate, it has been clearly mentioned that the individual is on retainer-ship. Not only this, Exts. R1 and R2 make it clear that the petitioner was duly aware of the fact that his period of retainer- ship came to an end on 30th November, 2009 on the completion of six months.

29. At the cost of reiteration, I will like to add that the retainership of the petitioner was not further renewed by the respondents after it came to an end on 30.11.2009. The petitioner was duly informed regarding the said fact vide letter dated 15.12.2009, the copy of which is Ex.R5. Admittedly, 15 Field Assistants (including the petitioner) employed by the respondents had raised the industrial dispute. Out of them, 11 Field Assistants compromised the matter vide settlement deeds Exs. R7 to R17. Only the matters relating to the petitioner and three other Field Assistants are before this Court.

30. Employing a person as retainer for six months on payment of the fixed emoluments per mensem cannot be termed as a regular employment. The same is in-fact contractual employment. The retainership/ contractual employment of the petitioner beginning June 1, 2009 came to an end on 30th November, 2009. Non renewal of the agreement of retainer-ship or the contract of employment does not fall within the mischief of the term 'retrenchment' as per clause (bb) of Section 2(oo) of the Act.

31. That being so, it cannot be said that the termination of the services of the petitioner by the respondents is illegal and unjustified.

32. This issue is decided against the petitioner and in favour of his opponents.

#### ISSUES NO. 2 TO 4

33. Taking into account my findings on issue No.1 above, it is held that the petitioner has no cause of action. He has no locus standi to sue. The claim petition is not maintainable in the present form.

34. These issues are also decided against the petitioner.

*RELIEF*

37. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

RAJAN GUPTA,  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

Ref: No. : 286/2012

Shri Mohit Singh s/o Shri Gurbal Singh, r/o House No. 190, Sunder Nagar, Dhangu Road  
Pathankot, Tehsil Pathankot, Distt. Gurdaspur , (Punjab). .....Petitioner.

*Versus*

The Managing Director, M/S Ayushi Steel Industry, Tokki (Damtal), Tehsil Indora, District Kangra, H.P. ....Respondent.

06-08-2013 Present: Petitioner with Sh. Umesh Nath Dhiman, Adv.  
Sh. Jitender Sharma, Adv., csl. for the respondent.

The case is listed for the evidence of the respondent today, but the claimant/petitioner has made the below given statement in the Court:—



“मैं यह औद्योगिक विवाद /reference न चलाना चाहता हूँ । Claim petition/reference को दाखिल दफतर किया जावे । मैं नया demand notice प्रतिवादी को दूंगा ।.”

In view of the above noted statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. RW Sh. Tarun Aggarwal, Special Power of Attorney holder of Smt. Anju Aggarwal, the proprietor of the respondent, is present. He is discharged.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion. Announced:

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 323/2012

Smt. Kanta Devi w/o Shri Bhikham Ram, r/o Village Rahnu, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ....*Respondent.*

06-08-2013 Present: None for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

File taken up today pursuant to the Order dated 11th June, 2013 passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 2935/2013 titled as Kanta Devi -vs- State of H.P. and others. The reference be registered at its original No.

The case has been called out repeatedly at intervals before and after the lunch. The petitioner and her ld. counsel have not appeared in the Court despite being specifically directed by the Hon'ble High Court of Himachal Pradesh to appear before this Court today i.e. on 6th August, 2013. It is already 3.00 P.M. No statement of claim / demand has been submitted till date by the petitioner. This indicates that the petitioner is not interested to pursue the matter. Consequently, it is held that she is not entitled to any relief. No artificial / fictional breaks in service were provided to the petitioner by the respondent from time to time (as per the reference). Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion. Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 28/2010

The General Secretary, Small Scale Industries Workers Union, Bodh, Tehsil Nurpur,  
District Kangra, H.P. *...Petitioner.*

*Versus*

1. The Managing Director, H.P. General Industries Corporation Limited, Shimla-1.
2. The Manager, Nurpur Silk Mills Limited, Bodh, P.O. & Tehsil Nurpur, District Kangra, H.P. *.....Respondents.*

22-08-2013 Present: Sh. Kartar Singh, Vice President of the Petitioner/  
Workers Union with  
Sh. T. R. Bhardwaj, A.R. and Sh. Aman Guleria, Adv.  
Sh. Jitender Sharma, Adv., csl. for the respondents.

The case is listed for arguments, but Sh. T.R. Bhardwaj, Id. A.R. for the petitioner has made the below given statement in the Court today:-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. My client(s) will challenge the Awards dated 27-02-2006 passed by this Court before the Hon’ble High Court of Himachal Pradesh for the redressal of their grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 250/2012

Date of Institution : 30.05.2012

Date of Decision : 08.08.2013

Shri Bajro s/o Shri Budhia, r/o Village Thalla, P.O. Rajera, Tehsil & Distt. Chamba, H.P.

....*Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division Chamba, Distt. Chamba, (H.P.)

....*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. R. K. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Bajro S/O Sh. Budhia, Village Thalla, P.O. Rajera, Tehsil & Distt. Chamba, H.P. by The Divisional Forest Officer, Forest Division Chamba, Distt. Chamba (H.P.) during April, 2000 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that in the month of March, 1985, his services were engaged by the respondent as a daily paid Nursery Watcher-cum-Chowkidar in the Forest Nursery at Thalla. He worked as such up-to the year 1993. In the year 1993, his services were disengaged by the respondent/department. He was re-engaged as per the order dated 20<sup>th</sup> July, 1993 passed by the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla in the same year i.e. the year 1993. In April, 2000, his services were once again terminated by the respondent without assigning any reason. Before the termination of his services, neither any notice was given to him nor he was afforded an opportunity of being heard. In the years 1989 and 1991, he had completed more than 240 days of work. After that, the respondent/department provided him the fictional breaks so that he does not complete 240 days of work for the regularization of his services. At the time of his retrenchment, the persons junior to him were retained in service by the respondent. The juniors have also been regularized by the respondent/department. He (petitioner) preferred O.A. (D) No.182/2000 before the Hon’ble Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon’ble Administrative Tribunal with the remarks that it has no jurisdiction to deal with the same. He was given the liberty to approach the Labour Court/Industrial Tribunal as per the relevant law. He (petitioner) worked to the full satisfaction of his superiors. The act and conduct of the respondent is illegal and unjustified. It is also violative of Section 25-F and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination of his services ordered by the respondent in the month of April, 2000 be upset. The respondent be directed to reinstate him in service with all

consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the services of the petitioner were engaged as a daily waged worker in the year 1990 and not in the month of March, 1985. The mandays chart of the petitioner is annexure R-1. His services were engaged for seasonal forestry works which are not of permanent nature. Therefore, the question of issuing any notice to the petitioner does not arise. The services of the petitioner were never dispensed with. As and when he demanded the work, his services were engaged on daily wage basis subject to the availability of the work and the funds. The petitioner used to work as per his sweet will. In the year 1993, the services of the petitioner were never disengaged. Actually, in April, 1992, the petitioner left the job of his own. No person junior to the petitioner has been retained in service or engaged/re-engaged.

On merits, it has been denied that the services of the petitioner were engaged in the month of March, 1985. Forestry works by their nature are casual, time bound and seasonal. The workmen like the petitioner are engaged against the establishment of seasonal character since the forestry works are performed intermittently. The daily waged workers are employed at a particular site depending upon the availability of the work and the budget with a clear understanding that the works, for which their services are engaged are not of regular/permanent nature. The petitioner was employed as a casual labourer by the Range Officer, Lower Chamba Range on various kinds of forestry works which are undertaken intermittently/seasonally. Earlier, the petitioner had worked as a daily waged labourer in Lower Chamba Range during the years 1990 to 1993 with frequent breaks. He filed O.A. No. (D) 1357/1993 before the Hon'ble Administrative Tribunal against him (respondent) regarding the disengagement of the services. The said Original Application was dismissed by the Hon'ble Administrative Tribunal per order dated 21.11.1996. The petitioner was also saddled with Rs.500/- as costs for suppression of the material facts. In April 2000, the petitioner willingly left the service despite the availability of the seasonal work. After April, 2000, the petitioner did not report for duty and abandoned the job. Since the petitioner left the service voluntarily, he is not entitled to any protection under the Act. No fictional break was provided to the petitioner at any point of time during the course of his employment. He is debarred from claiming parity with the workmen who worked in continuity. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the persons junior to him namely S/Sh. Kirpo and Amro etc. are still working with the respondent/department. He never left the job.

5. Per order dated 22.03.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent in the month of April, 2000 is illegal and unjustified as alleged? ..*OPP*
2. Whether the petition is not maintainable in the present form? ..*OPR*
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes  
 Issue No. 2 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Bajro Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the copy of his mandays chart produced by the respondent before the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in O.A. No.1357/1993.

In the cross-examination, he stated that he joined the service in the year 1985. The record regarding his employment in the year 1985 was produced by the respondent before the Hon'ble Administrative Tribunal. He does not know the outcome of the Original Application instituted by him before the Hon'ble Administrative Tribunal. He feigned ignorance about the fact that he was fined Rs.500/- by the Hon'ble Administrative Tribunal for the suppression of the material facts. He denied that after working for 27 days in the month of March, 2000, he absented from his duties. Now a days he makes both the ends meet by doing the days' drudgery privately. He denied that he voluntarily left the service and to gain the employment in a wrongful manner, he has given a phoney statement.

9. Conversely, Shri Kirpa Shankar, Divisional Forest Officer, Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the reply to the Original Application was filed by the department before the Hon'ble Administrative Tribunal. In that reply, it was admitted that the petitioner joined the service in the year 1985. He admitted that as per the record when the petitioner allegedly left the service, neither any notice was given to him calling upon him to resume his duties nor any departmental proceedings were initiated against him. He denied that the persons junior to the petitioner are still working under him (respondent) and the services of the petitioner were disengaged unlawfully.

10. Ex. RW1/A is the month-wise working days/mandays chart relating to the petitioner submitted by the respondent.

11. Ex. RW1/B is the copy of the order dated November 21, 1996 pronounced by the Hon'ble Administrative Tribunal in O.A. No. 1357/1993 titled as Shri Bajro versus The State of Himachal Pradesh through Secretary Forests at Shimla and Ors.

12. Ex. RW1/C is the copy of the mandays chart pertaining to the petitioner filed by the respondent before the Hon'ble Administrative Tribunal in O.A. (D) No. 182/2000 which was preferred by the petitioner (Shri Bajro).

13. No reference has been received from the appropriate Govt. regarding providing the intentional breaks in service to the petitioner by the respondent during the course of the employment. Thus, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as envisaged under Section 10(4) of the Act.

14. From the mandays charts Exts. PW1/B, RW1/A and RW1/C coupled with the admissions made by the respondent (RW1), it can be gathered that the services of the petitioner were initially engaged as a daily wager by the respondent in the year 1985 and he worked intermittently upto the month of March, 2000. In March, 2000, the petitioner had worked for 27 days with the respondent/department. The respondent has not placed/exhibited on the record any document evidencing that the services of the petitioner used to be engaged from time to time depending upon the availability of the work and the budget for carrying out various seasonal forestry works. Otherwise too, the mandays charts depict that in the year 1990, the petitioner had worked for 319 days and in the year 1991 the petitioner had worked for 314/287 days. A person working for more than 240 days in a year cannot be termed as a seasonal worker by any stretch of imagination.

15. The version of the petitioner is that in the month of April 2000, his services were wrongly and illegally terminated by the respondent. While denying the said fact the respondent has pleaded that the petitioner, who was an intermittent worker left the job of his own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays charts Exts. RW1/A and C unfold that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. April, 2000 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

18. Seniority list of daily waged workers as on 31.3.2012, who have completed 240 days or more of service in each calendar year, relating to the office of the respondent has been placed on the record by the latter. Its perusal discloses that Shri Kirpo etc., who are junior to the petitioner, are still serving the respondent/department. This indicates that the respondent failed to adhere to the principle of 'last come first go'. Not only this, after the disengagement of the services of the petitioner, one Shri Bishnu s/o Sh. Chhelu was appointed by the respondent as a daily wager in the year 2001. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not to complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

19. While testifying in the Court as PW1, the petitioner has admitted that he earns his livelihood by doing the days' drudgery privately. He also admitted that he owns some land. As PW1, the petitioner has given his age as 50 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

20. A glance of the order dated 21.11.1996, the copy of which is Ex. RW1/B passed by the Hon'ble Administrative Tribunal in O.A. No. 1357/1993 clarifies that the Original Application

instituted by the petitioner (Shri Bajro) was dismissed with costs of Rs.500/- in view of the suppression of the material facts by him. While disposing of the Original Application, it was observed by the Hon'ble Tribunal:

“Before parting we may observe that in the instant case applicant has partly suppressed the material facts with respect of his termination. The applicant totally mis. states the material facts or partly suppresses relevant facts from the court or forum, he should not ordinarily given any relief for all times to come. However, the partly suppression of the material facts may be with the intention to seek job because of the applicant living below poverty line.

It is also made clear that in case any junior in the meanwhile has become senior to the applicant by virtue of his services rendered during the above said period, in which the applicant served the department pursuant to our interim order, his seniority not be disturbed”.

It is an admitted fact that this order of the Hon'ble Administrative Tribunal was not assailed by the petitioner and has become final. Taking into account, the act and conduct of the petitioner as well as the observations made by the Hon'ble Administrative Tribunal, I am also not inclined to grant the seniority and continuity in service to the petitioner/claimant.

21. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO.2

22. Not pressed.

#### RELIEF

#### (ISSUE NO. 3)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent in the month of April, 2000 is set aside and quashed. The respondent is directed to reinstate the petitioner within a period of three months from today. He (petitioner) shall not be entitled to the seniority, continuity in service and back wages from the date/month of his termination till the date of reengagement. It is clarified that if the respondent fails to re-engage the services of the petitioner within the time given above, he (respondent) shall be liable to pay a sum of Rs.25,000/- (Rupees twenty five thousand) as compensation to the petitioner. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 258/2012

Date of Institution : 15.06.2012

Date of Decision : 17.08.2013

Shri Baktabar Khan s/o Shri Relu, r/o Village Bhadyar, P.O. Barang, Tehsil Sarkaghat,  
District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District  
Mandi, H.P. ....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N. L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Baktabar Khan S/O Shri Relu, R/O Village Bhadyar, P.O. Barang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the month of December, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by



the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25- H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. December, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the

compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 27.8.2012, following issues were struck:-
  1. Whether the services of the petitioner were terminated by the respondent w.e.f. 08.07.2005 wrongly and illegally as alleged? ..*OPR*
  2. Whether the reference is not maintainable in the present form? ..*OPR*
  3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR*
  4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..*OPR*
  5. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? ..*OPR*
  6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR*
  7. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
 

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed
Issue No. 5 :	Not pressed
Issue No. 6 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Baktabar Khan stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. December, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No. 648) was initially engaged by the respondent in the year 2000. She is/was junior to the

petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4, 5 and 6

18. Not pressed.

ISSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

#### *RELIEF*

(ISSUE NO. 7)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed.

The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 336/2009  
Date of Institution : 23.5.2009  
Date of Decision : 12.08.2013

Shri Bhuri Singh s/o Shri Dharmo, r/o VPO Motla, Tehsil Bhattiyat, District Chamba,  
(H.P.) .....Petitioner.

*Versus*

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.

....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Bhuri Singh S/O Sh. Dharmo by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 11/2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of June, 1994 by the respondent.

He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of 'last come first go' was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of July, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not

on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..*OPR*
2. Whether the petition is not maintainable in the present form? ..*OPR*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..*OPR*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..*OPR*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..*OPR*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed
Issue No. 5 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Bhuri Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware

of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged w.e.f. 04.7.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2000. The name of the petitioner figures at serial No.10 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999,



whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 04.7.1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 10 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

27. Not pressed.

RELIEF (ISSUE NO.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 16/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 132/2012  
Date of Institution : 19.1.2012  
Date of Decision : 01.08.2013

Shri Brij Bhushan s/o Shri Mangat Ram, r/o Village Nakehar, P.O. Harabag, Tehsil  
Joginder Nagar, Distt. Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

....Respondent

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. N. L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Brij Bhushan S/O Sh. Mangat Ram, Village –Nakehar, P.O. Harabag, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.04.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2001 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.04.1998 to 31.12.2000, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged

beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.04.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant for breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular cadre above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.4.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya’s case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of

continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? *OPP*
2. Whether the petition is not maintainable in the present form? *OPR*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *OPR*
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

- |               |   |
|---------------|---|
| Issue No. 1 : | No  |
| Issue No. 2 : | Yes   |
| Issue No. 3 : | Not pressed   |
| Issue No. 4 : | No  |
| Relief. :     | Claim petition dismissed vide operative portion of the Award. |

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Brij Bhushan stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed eight years of continuous service as on 31.3.2009.

14. Exts. P-1 to P-27 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.3.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

(3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on

account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.-** For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which (v) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

- (iii) he has been on leave with full wages, earned in the previous years;
- (iv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (v) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.3.1998. From that date to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO.2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO.3

27. Not pressed.

#### ISSUE NO. 4



28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.  
RELIEF (ISSUE NO.5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2013.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 171/2010  
Date of Institution : 20.05.2010  
Date of Decision : 03.08.2013

Shri Budh Ram s/o Shri Chainu Ram, r/o Village Jhiri, P.O. Nagwain, Sub Tehsil Aut,  
District Mandi H.P. ....Petitioner.

*Versus*

1. Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P.
2. The Associate Director, Regional Horticultural Research Station Bajaura, District Kullu, H.P. ....Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Dinesh Kumar Gupta, Adv.  
For the Respondent(s) : Sh. P.K. Sharma, Adv.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Budh Ram S/O Shri Chainu Ram by (1) Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P. (2) The Associate Director, Regional Horticultural Research Station Bajaura, District Kullu, H.P. w.e.f. 15-09-2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar (labourer) by the respondents in the month of December, 1986. He worked as such up-to the month of February, 1991, where after his services were disengaged. He (petitioner) was again employed by the respondents in the year 1997 and continuously worked up-to 14th September, 2001. Vide order/notice dated 16.8.2001, his services were once again terminated by the respondents w.e.f. 15.9.2001. The reason assigned for his removal from service in the termination notice is the financial stringency. He had completed more than 240 days of work in a block of 12 calendar months preceding the date of his termination. At the time of termination, no retrenchment compensation was paid to him. The reason given for his disengagement in the notice is wrong. Final seniority list was issued by the respondents per office order dated 01.12.1990. His name figures at serial No.227 of the said list. After his disengagement, new/fresh hands were engaged by the respondents. He was not given an opportunity of reemployment. After his termination he is not gainfully employed. No complaint was received against him during the course of his employment. The respondent No.2 issued instructions to the Technical Assistant vide letter dated 28.6.2000 to the effect that the daily paid labourers should not be allowed to complete 240 days of work in any calendar year of their engagement. Such instructions are wrong and illegal. The breaks in service given to him (petitioner) pursuant to the instructions dated 28.6.2000 are to be counted for the purpose of continuous service. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The retrenchment order was challenged by him (petitioner) before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla vide Original Application No. 2344/2001. The said application was disposed of by the Hon’ble Administrative Tribunal per order dated June 1, 2006 for want of jurisdiction.

As such, he (petitioner) prays that the termination order/letter dated 16.8.2001 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed collective reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the

effect that the petitioner worked as a daily paid casual labourer at RHRS (Regional Horticultural Research Station), Bajaura for sometime during the years 1986 to 1990. Thereafter, he left the job willingly. The petitioner again worked as a casual labourer at RHRS, Bajaura from the year 1997 to 15.9.2001. He did not complete 240 days of work in any calendar year of his employment. The termination of the services of the petitioner does not fall within the ambit of retrenchment as defined in Section 2(oo) of the Act. The claim petition is not maintainable. The reference sent to this Court by the Labour Commissioner is incomplete. The petitioner was not in continuous employment of the university. He was engaged on daily paid basis as and when the work was available. The services of the petitioner were retrenched w.e.f. 15.9.2001 after duly complying with the provisions of the Act. No funds were available in the scheme under which the petitioner was working. He did not attain the status of a temporary employee as he (petitioner) worked for less than 240 days in each and every calendar year. The university adopted standing instructions regarding engagement of labour on contractual basis instead of daily paid basis. The procedure for engagement of daily paid labour has been discontinued after December, 2001 by the university.

On merits, it has been owned that the services of the petitioner were engaged as a daily paid casual labourer in the year 1986 and he worked intermittently up-to the year 2001. One month notice was duly served upon the petitioner before the termination of his services. It stands admitted that the name of the petitioner finds mention at serial No.227 of the seniority list dated 01.12.1990. As the petitioner left the job voluntarily in the year 1991 in defiance of the relevant university rules and instructions, his name was deleted from the tentative seniority list. The administration of the university took a policy decision that no person shall be deployed on daily paid basis w.e.f. 01.1.2002. Shri Atma Ram (Technical Assistant) was issued a letter with the directions not to engage any daily paid labourer over and above the seasonal work for the purpose of benefiting the daily paid labourers as he had done so in violation of the instructions issued by the university. The claim petition is hopelessly time barred. As per the standing instructions regarding deployment of daily paid labourers in the university, any person who absents himself for more than six days continuously shall be deemed to have abandoned the job in terms of rule 5 (D)-absence from duty. The petitioner was employed in the research fields at the time of the seasonal activities subject to the availability of the work and the money. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 21.12.2011, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 15.9.2001 is violative of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..*OPP*
2. Whether the reference is not maintainable as alleged the petitioner is stated to be contractual employee. If so, its effect thereto? ..*OPR*
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1	: Yes
Issue No.2	: No
Relief.	: Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Budh Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he worked as a casual labourer from the year 1986 to 2001. He denied that he used to work intermittently and left the job of his own. He also denied that the retrenchment notice Ex. P2 (corresponding to Ex. RW1/B) was served upon him by the respondents and he has given a phoney statement.

10. Conversely, Shri Jagdish Chand Sharma, Senior Assistant office of the Assistant Director (R&E), Regional Horticultural Research Station, Bajaura, Distt. Kullu testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that no retrenchment compensation was paid to the petitioner. He also admitted that the persons junior to the petitioner are still serving the university. When the petitioner left the service, no notice was given to him calling upon him to resume the work. Even no departmental proceedings were initiated against the petitioner.

11. Ex. P-1 is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/C.

12. Ex. RW1/D is the seniority list of daily paid labourers of the respondent university as it stood on 31.12.1989. The name of the petitioner is there at serial No.227 of this list.

13. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks in service to the petitioner by the respondents. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference in view of Section 10(4) of the Act.

14. The respondents have not placed/exhibited on the record any document evidencing that the services of the petitioner were engaged in the research fields for the seasonal activities depending upon the availability of the budget and the work. Even there is nothing on the record to establish that the petitioner was a contractual employee.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged labourer in the year 1986 and he worked intermittently up-to the month of September, 2001. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents. While denying the said fact, the respondents have pleaded that the notice of retrenchment dated 16.8.2001 (the copies of which are Ex. P2 and RW1/B) was served upon the petitioner before the disengagement of his services with effect from 15.9.2001 (afternoon).

16. The mandays chart Ex. P1 (corresponding to Ex. RW1/C) depicts that the petitioner had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 15.9.2001.

17. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

18. Shri Jagdish Chand Sharma (RW1) in his cross-examination admitted that no retrenchment compensation was paid to the petitioner. This indicates that the respondents failed to comply with the mandatory provisions of Section 25-F of the Act.

19. Not only this, RW1 admitted that the persons junior to the petitioner are still working under the respondents. This shows that the respondents have failed to adhere to the principle of 'last come first go'. Their action contravenes the provisions of Section 25-G of the Act.

20. Since the respondents have flouted the provisions of Sections 25-F and 25-G of the Act, I have no hesitation to conclude that the termination of the services of the petitioner by the respondents is unlawful.

21. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. These issues are decided in favour of the petitioner and against the respondents.

#### RELIEF

(ISSUE NO.3)

23. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondents per notice dated 16.8.2001 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 15.9.2001 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 76/2011

Date of Institution : 25.06.2011

Date of Decision : 26.08.2013

Shri Chamel Singh s/o Shri Charnu Ram, r/o VPO Hatwas, Tehsil Nagrota Bagwan, District Kangra, H.P. ....Petitioner

*Versus*

3. The Director, Horticulture, H.P. Shimla.

4. The Assistant Fruit Technologist, Nagrota Bagwan, Tehsil & Distt. Kangra, H.P.

....Respondents

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of the employers i.e. i) The Director, Horticulture, H.P. Shimla ii) The Assistant Fruit Technologist, Nagrota Bagwan, Tehsil & Distt. Kangra, H.P. to give breaks in the service of Sh. Chamel Singh S/O Sh. Charnu Ram on the pretext of seasonal work and then to terminate him from service w.e.f. 01.8.2010 during the pendency of demand notice dated 30.11.2009, as alleged by workman, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is reproduced below verbatim for ready reference:-

“1. That the services of applicant have been engaged by the department on muster roll w.e.f. 01-07-1995 and he had been uninterrupted worked up to 31-07-1997 and w.e.f. 01-08-1997 his services have been unlawfully terminated by the respondent and then he had been approached to the Hon’ble H.P. Administrative Tribunal

camp at Dharamshala and filed the O.A. No. 375/1995 along with other workmen against the respondents for reinstatement.

2. That on 23-04-1998 the Hon'ble Administrative Tribunal passed the order and in which observed that the applicants have been completed 240 days in the proceeding 12 calendar months from the date of their disengagement and directed to respondents to reengage the services of applicant in the same capacity in which he was working at the time of his termination. On the basis of this order the services of applicant have been reinstated by the respondents and his services again dispensed/terminated by the respondent vide verbal order dated 25-11-1999 and the applicant again filed the O.A. (D) No:642/1999 and the same has been disposed of on 10-07-2002 and the O.A. has been returned to the Ld Counsel of the applicant on the point of jurisdiction to the daily waged workmen is not applicable before the Hon'ble Administrative Tribunal.
3. That it is categorically stated here that the services of applicant have been reengaged along with other co- workmen namely Sh. Fakir Chand, Sh. Ashok Kumar and Neeraj Kumar and the applicant had been uninterrupted worked with the respondent no 2 up to December, 2003 as such the applicant have been completed more than 240 days in the year 2001 to 2003 and duly covered under the definition of continuous service even that the applicant had been also completed more than 240 days in the year 1996 and 1999. It is again categorically submitted here that once a workman have been completed more than 240 days in any calendar year he deemed to be covered under the definition of continuous service under Section 25-B (2) (ii) of the Industrial Disputes Act, 1947 and without three months notice or three month pay along with retrenchment compensation under Section 25-N of the Industrial Disputes Act, 1947 no workman can be retrenched or terminated from the service. But in this case the services of applicant have been engaged and disengaged and given him fictional breaks on the part of the management his services disengaged in the year 1997, 1998, 2000 and from 2004 to onwards he engaged and disengaged without any notice and the respondent has violated the section 25-N of the Industrial Disputes Act, 1947. The respondent has also not violated section 25-N but also violated the principle of last come first go whereas person namely Sh. Vinod Kumar S/o Sh. Mangat Ram who was initially appointed by the respondent as daily wager w.e.f. 25-05-1991 and he had been continuously worked up to 31-12-1993 and from 01-01-1994 he has left his service on his own but in the year 1997 his services again engaged by the respondent continuously without any breaks but the services of applicant have been engaged and disengaged without any specific reason.
4. That the respondent is covered under the Factory Act, 1948 by the labour department and the respondent is an industrial establishment fall under Section 2-K(a) read with 25-L of the Industrial Disputes Act, 1947 whereas the manufacturing process is carried on in the establishment and the chapter V-A and V-B are applicable in the establishment so the fictional breaks given by the respondents to the applicant from time to time as mentioned in para no 3 is highly unjustified, arbitrary and against the mandatory provisions of Industrial Disputes Act, 1947. It is submitted here from 2004 to onwards he has provided the muster roll from 1st day of every month to 15th day of every month and he had been given the breaks from 16th of every month of end of the every and such practice continuing by the respondent up to 2010.
5. That it is specifically stated here that the services of namely S/Sh Ahsok Kumar S/o Sh Bishan Dass (09-04-1994), Fakir Chand S/o Sh Jeet Singh (18-04-1994), Smt. Kanta Devi W/o Sh Bishamber Dass (18-04-1994), Neeraj Kumar S/o Sh Budhi Singh

- (14-03-1995) and Sh Pawan Kumar S/o Sh Mando Ram (16-03-1995) were engaged by the respondents on daily waged basis without any appointment order and all the above named workmen were working with the applicant as daily wagger in the same capacity but their service have been engaged by the respondents without any breaks. It is submitted here the above named workman have been regularized by the respondents on regular pay scale as fixed by the department.
6. That the applicant has been raised his industrial dispute against the department vide his demand notice dated 30-11-2009 and supplementary demand notice dated 20-09-2010 but during the pendency of this demand notice the services of applicant has again terminated by the respondent w.e.f. 01-08-2010 without any prior permission under Section 33-A of the Industrial Disputes Act, 1947 and at the time of his unlawful termination dated 01-08-2010 he has not served any notice under Section 25-F or 25-N of the Industrial Disputes Act, 1947 and also not pay him retrenchment compensation accordance with law and without complying the same every termination is null and void. It is submitted here at the time of his unlawful termination i.e. 01-08-2010 no charge-sheet served to him neither the enquiry conducted against him in his alleged misconduct under the Certified Standing Order Act, 1946 which is applicable to the respondents as well as any industrial establishment.
  7. That it is categorically stated here that as per the new amendment in the Industrial Disputes Act, 1947 under Section 2-A vide notification of Central Government of India which is came into force w.e.f. 15-09-2010 in which any workman can be approached directly to the Hon'ble this court after completion of 45 days before conciliation proceeding and the applicant has approached to the Hon'ble this Court and filed the direct application dated 14-12-2010 and same has been registered as application no 56 of 2011. During the pendency of this application before the Hon'ble this Court the respondent has given the option to the applicant for resume his duty. On 28-06-2011 the Hon'ble Court has passed the order and on the basis of order the applicant has resume his duty w.e.f. 01-07-2011 and the applicant is still working with the respondent no 2.
  8. That the action of the respondent to reengaged and disengaged the services of applicant as given him fictional breaks from time to time and finally terminated his services dated 01-08-2010 is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions under the Industrial Disputes Act, 1947 and the same may kindly be set aside on the above ground.

Relief sought:

It is therefore prayed the Hon'ble Court may kindly be granted the following reliefs in the favour of applicant.

- i) The Hon'ble Court may kindly be set aside the illegal breaks period from 1995 to onwards and directed to respondent to condone the said period of the applicant in his continuity of service as treated full seniority from his initial appointment i.e. July, 1995 to onwards for the purpose of regularization.
- ii) The Hon'ble Court may kindly be set aside the illegal termination dated 01-08-2010 and directed to respondent to pay the back wages and seniority, in continuity of service till the date of his reinstatement as per the order of Hon'ble this Court.



- iii) The Hon'ble Court further directed to respondent to not give the fictional breaks to the applicant in future and also directed to regularize his services as per the policy of state government fixed from time to time in regular pay scale as applicable in the category of applicant".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal of fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. He has misrepresented himself and has approached the Court by concealing the material facts. The claim of the petitioner has become in fructuous with efflux of time and the re-engagement of his services on 29th June, 2011.

On merits, paras 1 to 8 of the reply read thus:-

"Para No.1

That the contents of para 1 of the petition are wrong and hence denied. As a matter of fact the applicant was engaged on hourly contract basis on 01.07.1995 to perform the different duties according to the availability of the work (the copy of the contract is enclosed as Annexure R1). It is further submitted that in addition to the applicant there are as many as 15 other worker who were working on contract basis as a additional labour along with the regular beldars working with respondent No.2. The detail of the workman w.e.f. 1995, 16 in Nos including the applicant who are working as such is being placed as Annexure R2. It is further submitted that the factory under the control of Respondent No.2 is being run as demonstration centre in order to utilize and process the marketable surplus fruits of the local and state orchardists which is seasonal as per availability of fruit crops. Thus, with the season of fruits like Aonla, Dhieun, Galgal, Lime, Oranges etc. the workload of factory increases with the need of the contractual additional labour. Accordingly the factory or respondent No.2 is not in position to provide work, in the off season to the above contractual labour, continuously, for whole of the year. The detail of mandays of all the 16 workers has already been place as Annexure R2.

Para No.2

That the contents of para 2 are admitted to the extent of OA No. 375/97 and O.A. (D) 642/99. It is however submitted that the OA No. 375/97 was filed by the applicant along with 3 other workmen working with respondent No.2 namely Sh. Faqir Chand, Sh. Ashok Kumar and Sh. Niraj Kumar. It is clarified here that the above Sh. Faqir Chand, Sh. Ashok Kumar and Sh. Niraj Kumar were never engaged on as contract basis as the applicant had been engaged. Their engagement was on the basis of Muster Roll against the regular works. As on today all the three workmen stand regularized. Further, the above workmen are senior to the applicant on his part, on the basis of order dated 23.4.1998 had continued to work in the same capacity in which he was working earlier. The copy of order is placed as Annexure R3. It is further clarified that the O.A. 642/99 vide order O.A. (D) 642/99 dated 25.11.1999 was dismissed for want of jurisdiction by the Hon'ble H.P. Administrative Tribunal. It will not be out of place to mention here that at no stage of time the services of the applicant were disengaged by the respondent No.2 except for temporary disengagement on account of non availability of work for the whole of the batch of the contractual labour during lean periods or the off season of fruits and vegetables which are generally processed by the factory under the control of respondent No.2. Due to this reason, in the year 2010 during the month of August the services of whole of the batch of contractual labour were disengaged for that

month only. However, except for the applicant the other workmen 15 in Nos had preferred to rejoin in the subsequent month of September, 2010. The applicant on his part had rejoined with the respondent No. 2 on the intervention of the Hon'ble Court vide order dated 28.06.2011.

Para No. 3

That the contents of para 3 of the claim petitioner are wrong and hence denied. As has been discussed in the para above, the workmen Sh. Faqir Chand, Sh. Ahsok Kumar and Sh. Niraj Kumar belong to different category than the applicant and as per their continuity in services, as well as prevailing policy of State Govt., they stand regularized. Moreover, all of them are senior to the applicant. The detail mandays chart and the regularization order of the above workmen are being placed as Annexure R4 & R5. Thus the applicant being contractual casual worker is precluded from claiming parity from the above workmen. It is also wrong to allege that the respondent had also violated the provision of the section 25-N of the Industrial Disputes Act. The provision of Chapter VB of the Industrial Disputes Act are not applicable to the replying respondent as the factory under the control of respondent No. 2 does not fall within the definition of section 25L of the said chapter.

Para No. 4

That the contents of para 4 of the claim petition are wrong and hence denied. The service condition of the applicant and other similarly situated workmen total 16 in Nos is being regulated as per the provision of the Industrial Disputes Act and as applicable to them. As much as the replying respondent are also maintaining the register of casual/seasonal contractual worker, the extract of which is being placed as Annexure R2. Further, it is wrong to allege that the replying respondent is giving fictional breaks to the applicant, rather every endeavor is being made by the replying respondent to provide work to the applicant and other similar situated casual/contractual workers. It is only during the lean period when the raw material is not available, the work is not being made available to the workmen. Thus, except for working season which extends from March to July and further October to January, the respondent is not in position to provide work for whole of the month to all the casual/contractual workers, the pattern which is uniform for all the workers falling under the said category which is evident from the mandays chart already attached.

Para No.5

That the contents of para 5 of the claim petition are wrong and hence denied. The workmen whose names are mentioned in this para are senior to the applicant and belong to different category than the applicant. In this regard mandays chart already being placed as Annexure R4.

Para No.6

That the contents of para 6 of the claim petition are admitted to the extent of demand notice 30.11.2009 and 20.09.2010. Rest of the contents of the para are wrong and hence denied. At no stage of the pendency of the above demand notices, the services of the applicant were disengaged, as a matter of fact, the applicant had worked in continuity upto July 2009 and thereafter in August 2010 on account of non availability of work, the services of applicant and other similarly situated contractual workers are temporarily disengaged for that month only. However, instead of reporting for the duty in the next month i.e. September 2010 along with the other workers the applicant had preferred to raise the present Industrial dispute. However, with the intervention of the Hon'ble Court vide order dated 28.06.2011 the applicant had resumed his duties w.e.f. 29th of June, 2011.

Para No.7

That the contents of para 7 of the claim petition are admitted.

Para No. 8

That the contents of para 8 of the claim petition are wrong and hence denied. A detailed reply has already given in para's above. The seasonal contract workers are being engaged on hourly basis in this unit. The numbers of hours worked by these workers are further converted into number of days. Therefore number of days can exceed to 240 days in a year depending upon the work load in the unit and their continuity. Therefore, it is wrong to say that fictional breaks have been given to him. Hence the petition filed by the applicant deserves to be dismissed. Thus at no stage of time the replying respondent had ever violated the provision of industrial Dispute Act".

In these circumstances, the respondents pray that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that at the time of his engagement, no appointment letter was issued by the respondents wherein it was mentioned that he has been employed on contract basis. His services were engaged as a daily wagger on muster roll basis w.e.f. 01.7.1995. In the year 1996, he completed more than 240 days of work. He is/was duly covered under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The Government of Himachal Pradesh has not declared the unit run by the respondents as a seasonal industry under Section 25-L of the Act. He (petitioner) and the other workmen have been discharging similar duties. It has been disputed that the work and the funds were not available with the respondent No.2. Similarly situated workmen were engaged by the respondent No.2 for the whole year and were not provided any break in service. The breaks in service were given to him (petitioner) by the respondent No.2 so that he does not complete 240 days of work in each and every calendar year of his employment for the purpose of regularization. It has been owned that his services have been re-engaged by the respondents on 28.6.2011 as per the orders of the Court. He was working with S/Sh. Faqir Chand, Ahsok Kumar and Niraj Kumar and others. The services of Shri Faqir Chand etc. were engaged by the respondents continuously without any break.

5. Per order dated 20.1.2012, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 01-08-2010 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to? ..*OPP*
2. Whether the respondents have been resorting given fictional breaks to the petitioner as alleged. If so, to what relief the petitioner is entitled to? ..*OPP*
3. Whether the reference is not maintainable as alleged. If so, to what effect? ..*OPR*
4. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? ..*OPR*
5. Relief.

6. At this stage, I will like to highlight that an application bearing No.56/2011 under Section 151 of the Code of Civil Procedure, 1908 was moved before this Court by the

applicant/petitioner for the grant of permission to file the direct industrial dispute under Section 2-A of the Act as per the amendment incorporated in the year 2010 under the Act. Such application was decided by this Court on 28.6.2011. The order dated 28.6.2011 reads as under:-

“Present: Petitioner present in person with Sh. Vijay Kaundal, adv.  
Sh. Sanjeev Katoch, Ld. Dy.D.A. alongwith Sh.  
D.S. Rana, Fruit Technologist, Nagrota Bagwan present in person.

The respondents submit that they are willing to reengage the petitioner on the same terms as he was working earlier with the respondent. The petitioner too, does not have any objection of his rejoining the respondent unit. He however, contends that the reference dated 25-7-2011 qua his nature of engagement and his disengagement thereof w.e.f. 1-8-2010 has also been sent to this Court for adjudication.

Since the respondents are willing to reengage the petitioner the question of his disengagement shall fade into oblivion. However, the question of the nature of his engagement shall be decided in the said reference.

Consequently the petitioner is directed to reengage the respondent unit from tomorrow itself. The petitioner shall report to the Fruit Technologist, Department of Horticulture, Fruit Canning Unit Nagrota Bagwan tomorrow at 9.00 a.m. sharp. The question of the nature his engagement shall abide by the decision of the reference so received by the appropriate Government. Consequently the present application is disposed off, accordingly. The file after completion be consigned to the record room.

Announced:

KR. CHIRAG BHANU SINGH  
*Presiding Judge*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.”*

7. At the time of argument, the ld. counsel for the parties stated at bar that the petitioner is still serving under the respondents at Nagrota Bagwan after the re-engagement of his services on 29.6.2011 in obedience to the order reproduced hereinabove. Therefore, the question of final termination of the services of the petitioner by his opponents on 1st August, 2010 has become in fructuous. In the subsequent part of this Award, I will confine my discussions and findings only with regard to the nature of the engagement of the services of the petitioner by the respondents and as to whether artificial/fictional breaks in service were given to the former by the latters or not on the pretext of the seasonal work.

8. I have heard the ld. counsel/AR for the parties and have gone through the case file.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	In fructuous
Issue No. 2 :	No
Issue No. 3 :	Yes
Issue No. 4 :	No
Relief. :	Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

#### ISSUES NO.2 AND 3

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

11. Shri Chamel Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged on 01.7.1995 on hourly and contract basis by the respondents. He also denied that the services of 15 other persons were engaged on contract basis by the respondents. He admitted that the working season is from the months of March to July and October to January. He denied that the respondents used to provide him and the other contractual workers the work only during the working season. He also denied that no artificial/fictional breaks were given to him by the respondents as well as the services of S/Sh. Faqir Chand, Ahsok Kumar and Neeraj Kumar were engaged by the respondents on muster roll/regular basis and not on contract basis. He admitted that S/Sh. Faqir Chand, Ahsok Kumar and Neeraj Kumar are/were senior to him. He denied that the principle of 'last come first go' was duly followed by the respondents. He admitted that he worked with the respondents up-to July, 2009. He even admitted that in the month of August, 2010, no work was available due to the off season because of which he and other labourers remained without work. He denied that in September, 2010 the other 15 contract labourers rejoined their duties which he failed to do. He admitted that as per the order dated 28.6.2011 passed by this Court, he rejoined on 29.6.2011 as well as the respondents/department provided him the work during each and every season. Self stated, the work was made available to him for the whole year. He denied that he has given a phoney statement.

12. Conversely, Shri Dhyan Singh Rana, Fruit Technologist, Fruit Canning Unit, Nagrota Bagwan (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the record the services of the petitioner were initially engaged on 1st July, 1995. He denied that muster rolls used to be issued in the name of the petitioner. In the year 1995 the petitioner worked for 81 days as a seasonal worker. He admitted that in the year 1996 the petitioner had worked for 291 days. Further, he admitted that thereafter, they started providing breaks in service to the petitioner from time to time. Self stated, the breaks were given to all the workers as their services used to be engaged for a specific period and work. When the petitioner was employed, no appointment letter was issued in his favour wherein it was mentioned that his services have been engaged for a particular period and work. He admitted that the petitioner and the other labourers who were not given any break in service namely S/Sh. Surinder Singh, Chain Singh, Vinod Kumar and Ashok Kumar etc. were discharging the duties of the same nature. He admitted that Shri Vinod Kumar joined the service in the year 1991 and left the same in the year 1993. Thereafter, Shri Vinod Kumar rejoined in the year 1997 and no break in service was provided to him. Volunteered, the services of Shri Vinod Kumar were engaged on muster roll basis and he remained absent from 01.1.1994 to 01.3.1997 because of the illness. He denied that Shri Vinod Kumar is junior to the petitioner. He admitted that as and when the services of the petitioner were disengaged, no notice in writing was served upon him. Self stated, the petitioner used to be informed verbally that he should not come to work. The Government has issued the instructions that muster rolls will be issued only in favour of those workmen whose services were engaged up-to 31.3.1995. The muster rolls are not to issue in favour of workmen who have been appointed on 01.4.1995 and thereafter, he admitted that in the year 1998, the petitioner had instituted an application before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal regarding providing breaks in service to him. Now the petitioner is working without any break from 29.6.2011 onwards as per the order passed by this Court. He denied that intentional breaks in service were provided to the petitioner time and again so that he does not complete 240 days of work for the purpose of regularization.

13. Ex. PW1/B is the copy of the order dated April 23, 1998 passed by the Hon'ble Administrative Tribunal in O.A (D) No. 375/1997 titled as Shri Faquir Chand and others vs. The

State of Himachal Pradesh through Secretary Horticulture, Shimla and others. The perusal of this order discloses that Shri Chamel Singh (petitioner) was the applicant No.4 in the Original Application. By way of the interim order dated 23.4.1998, the Hon'ble Administrative Tribunal directed the respondents to re-engage the applicants in the same capacity in which they were working at the time of their termination since in the application they (applicants) had averred that they are working with the respondents/department. From the year 1994 onwards and have completed 240 days of work in the preceding 12 calendar months.

14. Ex. PW1/C is the copy of the final order dated 23.4.1999 pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No.375/1997. It depicts that on the basis of interim order passed by the Hon'ble Administrative Tribunal the applicants were re-engaged by the respondents. The latter stated before the Hon'ble Administrative Tribunal that they do not intend to disengage the applicants except that due process of law. On the basis of the said undertaking given by the respondent, the Original Application was not pressed by the applicants (including the petitioner) and the same was disposed of.

15. Ex. PW1/D is the copy of an order dated 25.11.1999 rendered by the Hon'ble Administrative Tribunal in O.A. (D) No.642/1999 titled as Shri Chamel Singh versus The State of Himachal Pradesh through Secretary Horticulture, Shimla and others.

16. Ex. RW1/B is the copy of a public notice which was issued by the respondent No.2. The petitioner accepted the terms of employment as contained in this notice and joined the service on 01.7.1995. The notice bears the signatures of the petitioner and the respondent No.2. It reads as follows:-

“सर्वसाधारण को सूचित किया जाता है कि हिमाचल प्रदेश सरकार के आदेशानुसार किसी भी व्यक्ति/महिला को सीधे ही कार्य पर नहीं लगाया जा सकता तथा नैमित्तिक श्रमिक लगाने के लिये रोजगार कार्यालय के माध्यम से ही रखा जा सकता है। केन्द्र के कार्य व कार्य करने वाले इच्छुक बेरोजगार युवक/युवतियों को ध्यान में रखते हुए यह निर्णय लिया गया है कि जो युवक/युवती कार्य के अनुसार दाम अर्थात् ठेके पर कार्य करना चाहें वह अपनी सहमति देकर केन्द्र को आवश्यकतानुसार कार्य कर सकता है। ऐसे कार्य (ठेका) के लिये विभिन्न कार्यों की दरें इस सूचना के साथ पीछे पृष्ठ पर अंकित हैं। इस प्रकार प्रत्येक कार्यकर्ता को उसकी कार्य क्षमता के अनुसार ही राशि अदा की जायेगी न कि निर्धारित दिहाड़ी। यह भी स्पष्ट किया जाता है कि ठेके पर कार्य करने वाले मजदूरों को रविवार तथा अन्य राजपत्रित अवकाश देय नहीं है।

सहायक फल प्रौद्योग विज्ञ,  
नगरोंटा बगवॉ, जिला कांगड़ा

मुझे उपरोक्त शर्तें मन्जूर हैं और मैं इन शर्तों के अनुसार ही फल विधायन केन्द्र हटवास में जब तक विधायन केन्द्र में कार्य होगा, करूंगा। मुझे दूसरे नैमित्तिक श्रमिकों से जो कि बहुत लम्बे समय से केन्द्र में लगे हैं, उनसे कुछ भी लेना देना नहीं होगा।

हस्ता. चमेल सिंह  
सहमती वाले के हस्ताक्षर व पूरा पता  
चमले सिंह पुत्र श्री चरण सिंह  
गाँव व डाँ 0 हटवास  
1-7-95

हस्ता 0 1/7  
उत्पादन प्रभारी  
स 0 फ 0 प्रौ 0 महोदय के अनुसार  
प्रार्थी को 1-7-95 से ठेके में कार्य  
पर रखा गया” ।

17. Ex. RW1/C is the detail of the wages to be paid to the labourers who are/were engaged as per the public notice Ex. RW1/B.

18. Ex. RW1/D is the seniority list of seasonal contract workers pertaining to Fruit Canning Unit, Nagrota Bagwan up-to 20th September, 2011. It unfolds that 16 persons in all are/were working in the Fruit Canning Unit, as seasonal workers on contract basis. The name of the petitioner figures at serial No.3 of the list.

19. Ex. RW1/E is the information regarding daily wagers/seasonal contract workers pertaining to Fruit Canning Unit, Nagrota Bagwan as it stood on 31st December, 1995. The name of the petitioner is there at serial No.3.

20. Exts. RW1/F1 to F16 is the information regarding seasonal contract workers relating to Fruit Canning Unit, Nagrota Bagwan from the year 1996 to the year 2011. In these documents the period for which each and every seasonal worker served on contract basis has been detailed.

21. Ex. RW1/G is the list of the daily paid labourers working in Fruit Canning Unit, Nagrota Bagwan who were employed on muster roll basis.

22. Exts. RW1/H and I are the copies of the office orders issued by the respondent No.1 in the years 2010 and 2011 regarding the regularization of the services of the daily waged workers serving in the department in the entire State. The name of none of the workers who was employed on contract basis for carrying out the seasonal works in Fruit Canning Unit, Nagrota Bagwan finds mention in both these office orders.

23. Ex. RW1/J is the copy of a letter dated 11th July, 1995 written by the Chief Secretary to the Government of Himachal Pradesh. This letter was addressed to the various authorities. Instructions were issued regarding the regularization of the daily waged workers in the departments (other than Public Works and Irrigation and Public Health Departments). It was ordered that after 01.4.1995, no fresh recruitment of daily waged/muster roll workers shall be made in any department, Board, Corporation and University etc. If the need arises, fresh recruitments will be done only after obtaining prior approval of the Government through Finance Department.

24. Ex. RW1/K is the copy of the order dated 28.6.2011 pronounced by this Court in Application No.56/2011 titled as Shri Chamel Singh versus Director of Horticulture.

25. It is the admitted case of the parties that the services of the petitioner were initially engaged on 1st July, 1995 in the Fruit Canning Unit, Nagrota Bagwan and he is still working there.

26. The version of the petitioner is that he was employed as a daily wager on muster roll basis by the respondents/department and from the date of his engagement to 28/29/June, 2011 (the date on which he rejoined as per the orders of the Court). Artificial/fictional breaks in service were provided to him by his adversaries wrongly and illegally so that he does not complete 240 days of work for the regularization of his services as per the policies of the Government.

27. On the other hand, the respondents have pleaded that the services of the petitioner were engaged after issuing a public notice the copy of which is Ex. RW1/B. The petitioner joined the service after admitting the terms and conditions of the employment as contained in the public notice Ex. RW1/B. He and 15 other workers whose names figure in Exts. RW1/D to RW1/F 16 were engaged on contract basis from time to time for carrying out the seasonal works in the Fruit Canning Unit at Nagrota Bagwan. All the seasonal contract workers were paid the wages at the rates mentioned in Ex. RW1/C. As the petitioner was only a seasonal contract worker, the disengagement of his services on the cessation of work will not amount to retrenchment as per

Section 2(oo) (bb) of the Act. Non providing of the work to the petitioner during the off season cannot be termed as intentional/fictional break in service.

28. The petitioner has not placed/exhibited on the file any document evidencing that his services were engaged as a daily waged labourer on muster roll basis by the respondents. He has not denied the fact that he had joined the service on 01.7.1995 after issuance of the public notice Ex. RW1/B which bears his signatures. The contents of Ex. RW1/B have already been mentioned by me in the earlier part of the Award. In view of these facts, the petitioner/claimant cannot be countenanced that his services were engaged as a daily wagger on muster roll basis and he was not employed as a seasonal worker on contract basis.

29. Ex. RW1/D reveals that in the years 1996, 1999 and 2001 to 2003, the petitioner had worked for more than 240 days in a calendar year under the respondents. The petitioner (PW1) in his cross-examination admitted that because of the off season in the month of August, 2010 he and the other seasonal contract workers remained without any work. Of course, he denied that in the month of September, 2010, the other 15 seasonal contract labourers rejoined their duties which he failed to do.

30. The petitioner has not produced any document to show that the services of any seasonal contract workers have been regularized by the respondents. So far as Shri Vinod Kumar etc. are concerned, Ex. RW1/G clarifies that their services were engaged as daily paid labourers on muster basis by the respondents.

31. In *Morinda Co-op Sugar Mills Ltd. vs. Ram Kishan and Ors etc.*, AIR 1996 SC 332 and *Batala Coop. Sugar Mills Ltd. vs. Sowaran Singh*, AIR 2006 SC 56, it has been held that the disengagement of the services of a seasonal worker on cessation of the work/closure of the season will not amount to retrenchment even if he had worked for more than 240 days in a year as per clause (bb) of Section 2(oo) of the Act.

32. Taking into account the catena of law laid down in these authoritative pronouncements and the evidence available on the record, it can be safely said that the services of the petitioner were engaged by the respondents as a seasonal worker only on contract basis. The services of the petitioner were engaged by the respondents as per the availability of the work from time to time. No artificial/fictional breaks in service were ever provided to the petitioner by his opponents. The claim petition is not maintainable. The petitioner cannot claim the parity with Shri Vinod Kumar and others, the workers whose names figure in Ex. RW1/G since from the very beginning the services of Shri Vinod Kumar etc. were engaged by the respondents as daily wagers on muster roll basis. The principle of parity is applicable amongst the equals only. As already mentioned, there is nothing on the record to establish that the services of 15 other seasonal contract workers or any of them (working with the petitioner) has/have been regularized. The working pattern of the petitioner and other seasonal contract workers is the same as is evident from Ex. RW1/D.

33. To be fair to the ld. authorized representative and the counsel for the petitioner, now I proceed to discuss the rulings cited by them.

- a) *Sachiv, Krishi Upaj Mandi Samiti Anjad (Barwani) vs. Shobha Barge*, 2003 LLR 462 (MP). This case relates to the termination of a workman who had worked continuously for more than 240 days in contravention of the provisions of Section 25-F of the Act. It nowhere shows that the services of the workman were engaged as a seasonal contract worker.
- b) *S. M. Nilajkar & Ors. vs. Telecom, District Manager, Karnataka*, 2003 LLR 470 (SC). The ruling deals with the workman serving in a scheme or project whose services were terminated as a result of non renewal of contract of employment after its expiry.



- c) Steel Authority of India Ltd. and Union of India and others, [2006 (111) FLR 483] (SC). This case deals with the admissions made in the pleadings. It lays down that the judicial admissions can be made the foundation of the rights of the parties. This principle also applies to an industrial adjudication. There is no dispute regarding this proposition of law. However, it is equally settled with the statement of a witness is to be read a whole and not in piece meal.
- d) Bhogpur Co-operative Sugar Mills Ltd. vs. Harmesh Kumar, 2007 LLR 183 (SC). This ruling deals with the workmen who are recruited in the seasonal industry at the beginning of the season and are retrenched at the end of it. The trite laid down in this authority is nocuous to the case of the petitioner.
- e) M/s. Classic Bottle Caps (P) Ltd. vs. Usha Sinha & Ors., 2012 LLR 738 (DHC). This authority postulates that the cross-examination is the part of evidence. Admissions in the cross-examination can be used by a party who is benefited by that admission. No controversy regarding this proposition of law. At the cost of reiteration, I will like to add that the statement of the witness is to be read in entirety and not in parts so as to favour of particular party.
- f) Manoj Kumar Sharma vs. H.R.T.C. and Anr., 2007 LLR 1155 (HP). This ruling pertains to the workman who was given fictional breaks after 89 days and re-appointed again and again. The breaks were given to deprive the workman for completing 240 days of work in the 12 calendar months for attaining the permanency. The same is not the situation in the instant case.
- g) Santuram Yadav and another and Secretary, Krishi Upaj Mandi Samiti Bemetara and another, [2010 (124) FLR 938] (SC). This case deals with the workman who had worked for more than 240 days continuously in one calendar year. It does not show that the services of the workman were engaged for seasonal work on contractual basis.
- h) Naresh Kumar vs. State of H.P. and others, Latest HLJ 2008 (HP) 87. This case relates to a beldar who was appointed as a daily wage basis.

34. The rulings (detailed above) in no way come to the rescue of the petitioner.

35. These issues are decided against the petitioner and in favour of the respondents.

#### ISSUE NO. 4

36. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been

made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

37. This issue is decided in favour of the petitioner and against his opponents.

#### RELIEF (ISSUE NO.5)

38. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

39. The reference is answered in the aforesaid terms.

40. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

41. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 26/2011  
Date of Institution : 31.03.2011  
Date of Decision : 19.08.2013

Shri Charan Dass s/o Shri Utam Chand, r/o VPO Jagat Sukh, Tehsil Manali, Distt. Kullu, H.P. ....Petitioner.

*Versus*

3. Sh. John Sims, Managing Director, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P.

4. Sh. Ajay Dabra, Director, Corporate Affairs, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P. ....Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. Kamal Kishore, Adv.
	: Miss Rajni Chauhan, Adv.
For the Respondent(s)	: Sh. Jitender Sharma, Adv.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Charan Dass S/O Sh. Utam Chand, Field Assistant by the management of Himalayan Ski village Private Ltd. Regd. Office ‘SOHAM’ Village Shuru, Manali, Distt. Kullu, H.P. we.f. 16.12.2009 without serving charge sheet, without conducting enquiry and without following the mandatory provisions of the Industrial Disputes Act, 1947, inspite of retainership letter dated-nil, issued by the management, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from above management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that an interview was conducted by the respondents in which he participated. He was selected, whereafter, the appointment letter dated 1st June, 2007 was issued in his favour by the respondents. He joined the service. As per clause 10 of the appointment letter, on completion of the probation period of six months, his services were regularized by the company/respondents vide confirmation letter dated 1st December, 2007. His (petitioner's) commitment for the company was appreciated. He continuously worked with the respondents up-to December, 2009 as Field Assistant (Mountain Sports Division), Manali, District Kullu. He completed 240 days of work in each and every calendar year of his employment. During the service tenure, his work and conduct was excellent. Neither any explanation was called for nor any show cause notice/warning letter etc. was issued to him. On 16th December, 2009, his services were terminated by the respondents wrongly and illegally by adopting the principle of hire and fire. Before the termination of his services, neither he was chargesheeted nor an inquiry was conducted against him. He was not given an opportunity of being heard. No notice was given to him before the termination of his services. Wages in lieu of the notice period and the retrenchment compensation were also not paid to him. Not only this, the respondents did not obtain necessary prior approval from the appropriate Government to retrench his services. On December 16, 2009, he (petitioner) was forcibly and arbitrarily refused the entry in the premises of the registered office of the company. The entry was blocked to discontinue his services in violation of the terms and conditions of the appointment letter dated 1st June, 2007. He was not paid the salary or stipend for the regular employment. He was kept idle for the unexplained reasons. For the last six months, the respondents have not paid any salary to him. He kept on visiting the office of the respondents time and again for re-employment and payment of his dues, but in vain. The respondents have violated the terms of the contract. From the date of his disengagement, he (petitioner) is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The respondents indulged in unfair labour practice. He is struggling hard to maintain himself and his dependants. A demand notice under Section 2-A of the Act was served upon the respondents by him, but of no avail.

As such, he (petitioner) prays that the verbal retrenchment order dated 16.12.2009 passed by the respondents be upset. The latters be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.2 filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable as the project Himalayan Ski Village proposed to be started at Manali was not allowed to start by the Government of Himachal Pradesh. The project is standstill. The claim of the petitioner is not sustainable in the eyes of law in view of the acceptance of letter No.HSV/KV/Retainer/021 by him. He (petitioner) has suppressed

the material facts from the Court and has not come to the Court with clean hands. The petitioner has no locus standi to sue. He has no cause of action. The petition is bad in the eyes of law.

On merits, it has been owned that the services of the petitioner were engaged vide letter dated 1st June, 2007. He was initially appointed with probation of six months. The petitioner did not work up-to 16th December, 2009 as claimed. Actually, the petitioner was not in the employment of the company after 31.5.2009. In May 2009, he was offered the retainer-ship per letter No.HSV/KV/Retainer/021. The retainer-ship was accepted by the petitioner and other workmen. Now the petitioner cannot change his stance. On accepting the retainer-ship, the petitioner never attended the office after 31.5.2009. He cannot take advantage of his own lapse. After accepting the retainer-ship, the petitioner left the company of his own. He did not complete 240 days of work in any calendar year of his engagement as claimed. The services of the petitioner were never terminated in the manner as alleged by him. Due to the circumstances beyond their control, they (respondents) were forced not to start the project by the Government of Himachal Pradesh. The company was served a show cause notice for cancellation of the project by the Himachal Pradesh Government. It (company) had to approach the Hon'ble High Court of Himachal Pradesh against the show cause notice. The Hon'ble High Court passed an interim order against the cancellation of the project which continues till date. In the best interest of the petitioner and others, all the employees were given six months retainer-ship which started w.e.f. 01.6.2009. The letters qua the retainer-ship were accepted by all the employees (including the petitioner). It has been denied that a demand notice was issued by the petitioner. The management was forced to close the project due to negative approach of the Himachal Pradesh Government. Ultimately, the termination of the services of the petitioner was done and took place due to the circumstances created by the Government of Himachal Pradesh. The management had only handful employees. There was no need to get approval of the appropriate Government for the disengagement of their services. The provisions of Section 25-N of the Act are not attracted in this case. The petitioner was never refused entry into the office as claimed. He in-fact never visited the office after 31.5.2009. Since there was no work due to the forced closure of the project, the company was left with no option, but to disengage the services of the workmen. After offering the retainer-ship to the petitioner and other workmen for six months starting from 01.6.2009, the position remained the same. The company was left with no option except not to give any further retainer-ship to any of the employee. The petitioner was duly informed about the condition/circumstances prevailing in the company. Due to the dead lock with the Government, they (respondents) were forced to close the operation of the project. The petitioner is still persisting for the continuous work knowing well that no work at all is available with them (respondents). No provision of the Act has been infringed. The alleged disengagement of the services of the petitioner cannot be termed as retrenchment. The petition is meritless. The petitioner is not entitled to any relief. The project stands closed.

In these circumstances, the answering respondent No.2 prays that the petition in hand be dismissed.

4. The reply submitted by the respondent No.2 has been adopted by the other respondent viz. respondent No.1.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that he ever accepted and signed the retainer-ship agreement. He never left the company of his own. He cannot be held responsible for the closure of the project. The respondents cannot shun their responsibilities by resorting to the unfair means. Alleged closing down of the project is a matter between the respondents and the Himachal Pradesh Government. The retainer-ship letter is denied for want of knowledge.

6. Per order dated 07.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 is illegal and unjustified as alleged? ..*OPP*
2. Whether the petitioner has a cause of action? ..*OPP*
3. Whether the petitioner has locus-standi to sue? ..*OPP*
4. Whether the petition is not maintainable in the present form? ..*OPR*
5. Whether the petitioner has not come to the Court with clean hands. If so, its effect? ..*OPR*
6. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? ..*OPR*
7. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No. 2 :	No
Issue No. 3 :	No
Issue No. 4 :	Yes
Issue No. 5 :	Yes
Issue No. 6 :	Yes
Relief :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. Shri Charan Dass (petitioner) stepped into the witness box as PW2. In his affidavit Ex. PW2/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that the work of the project is totally closed from the month of February, 2008 onwards. He feigned ignorance about the fact that despite the closure of the project the respondents gave him the pay up-to the month of May, 2009 without doing any work. He denied that when the situation did not improve, the respondents kept him as a retainer for six months vide retainer-ship letter Ex. R3. Such letter does not bear his signatures. He denied that after June 2009, he is working somewhere else. He also denied that out of the greed and to gain the employment in a wrongful manner, he has instituted a phoney petition.

10. Shri Eenam Thakur (PW3) who is the petitioner in a similar reference bearing No.14/2011, supported the cause of the petitioner. Ex. PW3/A is the affidavit filed by him in terms of Order 18 Rule 4 CPC.

In the cross-examination, he admitted that presently no field assistant is working with the respondents. He also admitted that the project is lying closed from the month of February, 2008 onwards. He denied that to help his companion, he has given a wrong statement.

11. Shri Amar Nath Dhiman (PW1) is Labour Inspector, Kullu. He brought the requisitioned record and deposed that a demand notice was issued by the petitioner. Copy of the demand notice was received in his (PW1's) office. He called the parties and tried to get the dispute resolved amicably. Mandays chart Ex. PW1/A was produced by the respondents during the conciliation proceedings.

In the cross-examination, he stated that the copies of various letters viz. Exs. R1 to R3 were also produced by the respondents at the time of the conciliation. He admitted that in all 15 workmen had raised the industrial dispute. 11 workmen withdrew their cases. The project is lying closed.

12. Conversely, Shri Ajay Dabra (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongly.

13. Ex. PW2/B is the copy of the appointment letter dated 1st June, 2007 issued in favour of the petitioner by the respondents. It bears the signatures of Shri Ajay Dabra (respondent No.2).

14. Ex. PW2/C is the copy of the letter dated 01.12.2007 written to the petitioner by the respondents. It reveals that on successful completion of the probation period as per appointment letter dated 01.6.2007, the services of the petitioner were confirmed w.e.f. 01.12.2007.

15. Ex. PW2/D is the copy of the demand notice dated 17<sup>th</sup> December, 2009 served upon the respondents by the petitioner under Section 2-A of the Act.

16. Ex. R1 is the copy of a letter dated 01.12.2009 written by all the 15 Field Assistants (including the petitioner) to the respondent No.2. In this letter, it was mentioned that the retainer-ship period of six months has come to an end on 30.11.2009. All the 15 Field Assistants are present today i.e. on 01.12.2009. The company should inform them as to what is the status of their employment from 01.12.2009 onwards. They be also intimated as to what is the status of their retainer-ship for the last six months and when the retainer-ship amount will be paid to them.

17. Ex. R2 is another letter dated 08.12.2009 written by all the Field Assistants to the respondent No.2 in continuation of the letter dated 01.12.2009 (Ex. R1). In Ex. R2, it was mentioned that the queries raised by them per letter Ex. R1 have not been replied. They (workmen) are approaching the Labour Court for the redressal of their grievances.

18. Ex. R3 is the copy of letter No.HSV/KV/Retainer/021 written to the petitioner by the respondent No.1. It clarifies that because of the closure of the project, the company expressed its inability to keep the employees. The petitioner was offered retainer-ship from 1st June, 2009 onwards for a period of six months. It is/was mentioned in the letter that at the end of the six months period, the company shall review the situation and decide if this retainer-ship can be continued or not. The retainer amount of the petitioner was fixed as Rs.2,000/- per month beginning June 1, 2009. This letter of retainer-ship bears the signatures of the petitioner as a token of its acceptance.

19. Ex. R4 is the no dues/clearance certificate which was produced by the petitioner on 15.9.2009 before the respondents. In this certificate, a mention has been made that the individual is on retainer-ship.

20. Ex. R5 is the copy of the letter dated 15.12.2009 written by the respondent No.1 to the petitioner. Vide this letter, the petitioner was informed that his retainer-ship cannot be renewed further as no work is available. In the letter, it was also highlighted that the payment of last six months retainer-ship fee will be the last payment until HSV (Himalayan Ski Village) is allowed to proceed by the State of Himachal Pradesh.

21. Ex. R6 is the copy of the postal receipt. It evidences that the letter Ex. R5 was sent to the petitioner under registered cover.

22. Exts. R7 to R17 are the copies of the deeds of settlement dated 24th day of March, 2011 which were entered into between the 11 Field Assistants namely S/Sh. Singhi Ram and Kewal Ram etc. as well as the respondents.

23. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. Thus, as per the reference/notification issued by the appropriate Government, this Court is required to decide as to whether the verbal termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 in spite of the issuance of the retainer-ship letter by the management (respondents) is legal and justified or not?

24. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondents in contravention of the provisions of Section 9-A of the Act.

25. It is often said and rightly too that the men may tell lies, but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight.

26. It is the admitted case of the parties that the services of the petitioner were engaged as a Field Assistant. Appointment letter dated 1<sup>st</sup> June, 2007 (Ex. PW2/B) was issued in his favour. It is also an admitted fact that on the completion of the probation period of six months, the services of the petitioner were confirmed by the respondents per letter dated 1<sup>st</sup> December, 2007 (Ex. PW2/C).

27. From the evidence available on the record, it can be gathered that some dispute arose between the respondents/company and the Government of Himachal Pradesh because of which the work of the project (Himalayan Ski Village) came to a standstill somewhere in the beginning of the year 2008. Due to this reason, the company was not in a position to retain all the workmen. Despite the non availability of the work the petitioner remained on the rolls of the respondents up-to 31.5.2009 and was paid the wages/salary as per the appointment letter Ex. PW2/B. From 1st June, 2009, the petitioner was kept as a retainer on payment of the retainer- ship fee of Rs.2000/- every month per letter Ex. R3. The retainership period was of six months beginning 01.6.2009. As already mentioned Ex. R3 bears the signatures of the petitioner. It is well known that a person signing a document is presumed to agree to its contents. True it is that the petitioner has denied his signatures on Ex. R3. It appears to me that false stand has been taken by the petitioner with an ulterior motive taking into account the other evidence available on the file.

28. As mentioned earlier, clearance/no dues certificate dated 15.9.2009, the copy of which is Ex. R4, was submitted by the petitioner. It too, bears his signatures. In this certificate, it has been clearly mentioned that the individual is on retainer-ship. Not only this, Exts. R1 and R2 make it

clear that the petitioner was duly aware of the fact that his period of retainer- ship came to an end on 30th November, 2009 on the completion of six months.

29. At the cost of reiteration, I will like to add that the retainership of the petitioner was not further renewed by the respondents after it came to an end on 30.11.2009. The petitioner was duly informed regarding the said fact vide letter dated 15.12.2009, the copy of which is Ex.R5. Admittedly, 15 Field Assistants (including the petitioner) employed by the respondents had raised the industrial dispute. Out of them, 11 Field Assistants compromised the matter vide settlement deeds Exs. R7 to R17. Only the matters relating to the petitioner and three other Field Assistants are before this Court.

30. Employing a person as retainer for six months on payment of the fixed emoluments per mensem cannot be termed as a regular employment. The same is in-fact contractual employment. The retainership/ contractual employment of the petitioner beginning June 1, 2009 came to an end on 30th November, 2009. Non renewal of the agreement of retainer-ship or the contract of employment does not fall within the mischief of the term 'retrenchment' as per clause (bb) of Section 2(oo) of the Act.

31. That being so, it cannot be said that the termination of the services of the petitioner by the respondents is illegal and unjustified.

32. This issue is decided against the petitioner and in favour of his opponents.

#### ISSUES NO. 2 TO 4

33. Taking into account my findings on issue No.1 above, it is held that the petitioner has no cause of action. He has no locus standi to sue. The claim petition is not maintainable in the present form.

34. These issues are also decided against the petitioner.

#### ISSUES NO. 5 AND 6

35. Keeping in view my discussions and findings on issue No.1, it can be safely said that the petitioner has suppressed the material facts from the Court. He has not approached the Court with clean hands. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

36. These issues too are decided against the petitioner and in favour of his adversaries.

#### *RELIEF*

#### (ISSUE NO.7)

37. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.



39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 138/2012  
Date of Institution : 19.1.2012  
Date of Decision : 01.08.2013

Shri Dhani Ram s/o Shri Mangat Ram, r/o Village Dari, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ....*Petitioner*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. ....*Respondent*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. N. L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Dhani Ram S/O Sh. Mangat Ram, Village –Dari, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.08.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his

favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.10.1998 to 31.12.2000, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.10.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (v) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (vi) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (vii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.8.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? . . *OPP*
2. Whether the petition is not maintainable in the present form? . . *OPR*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . *OPR*
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . *OPR*
5. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	No
Issue No. 2 :	Yes
Issue No. 3 :	Not pressed
Issue No. 4 :	No

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Dhani Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/G.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed 8 years of continuous service as on 31.3.2009.

14. Ex. RW1/F is the copy of the letter dated 17th June, 2010 issued by the Principal Secretary (I&PH) to the Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed 8 years or more service as on 31.3.2009.

15. Exts. P-1 to P-29 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.8.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

17. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

18. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

19. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (5) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (6) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.-** For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (ix) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (x) he has been on leave with full wages, earned in the previous years;
- (xi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

20. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

21. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

22. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.8.1998. From that date to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

23. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

24. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

25. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

26. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

27. This issue is also decided against the petitioner.

#### ISSUE NO. 3

28. Not pressed

#### ISSUE NO. 4

29. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

30. This issue is decided in favour of the petitioner and against the respondent.

#### *RELIEF*

#### (ISSUE NO. 5)

31. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 350/2012  
Date of Institution : 17.9.2012  
Date of Decision : 03.08.2013

Shri Dharmender Singh s/o Shri Ami Chand, r/o Village Mahara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ....*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Dharmender Singh S/O Shri Ami Chand, R/O Village Mahara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during January, 1998 to 31-08-2007 by the Executive Engineer, H.P.P.W.D Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the month of January, 1998. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his



services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 31.08.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from January, 2000 to 31.08.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2005 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910- 10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from January, 1998 to 31.08.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of January, 1998. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide

notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.

5. Per order dated 21.03.2013, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time (as per the reference) is illegal and unjustified as alleged? ..*OPP*
2. Whether the petition is not maintainable in the present form? ..*OPR*
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	No
Relief. :	Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO. 1

8. Shri Dharmender Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex.PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

12. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2<sup>nd</sup> January, 2004 (forenoon).

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 27.1.1998 by the respondent.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his engagement to August 31, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

19. Not pressed.

## ISSUE NO. 3

20. Reference No. 41/2001 (RBT No. 403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## ISSUE NO.4

23. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

24. This issue too is decided in favour of the petitioner and against the respondent.

*RELIEF*

## (ISSUE NO.5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31st

August, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 135/2012  
Date of Institution : 19.1.2012  
Date of Decision : 01.08.2013

Shri Diwan Singh s/o Shri Jagat Ram, r/o Village Ahroo, P.O. Sainthal, Tehsil Joginder Nagar, Distt. Mandi, H.P. ....Petitioner

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

....Respondent

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Diwan Singh S/O Sh. Jagat Ram, Village –Ahroo, PO Sainthal, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-

F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.11.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.05.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.01.1999 to 31.05.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.01.1999 to 31.05.2001 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of service for the purpose of his regularization.
- (viii) The Hon’ble Court again directed to respondent to granted the work-charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.

(ix) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of workcharges/ regular above to the junior.

(x) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.11.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..*OPP*
2. Whether the petition is not maintainable in the present form? ..*OPR*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No.2 :	Yes
Issue No.3 :	Not pressed
Issue No.4 :	No
Relief. :	Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Diwan Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.



13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed eight years of continuous service as on 31.3.2009.

14. Exts. P-1 to P-22 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 06.11.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (7) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (8) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (d) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

**Explanation.-** For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (xiii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (xiv) he has been on leave with full wages, earned in the previous years;
- (xv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xvi) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.11.1998. From that date to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years

1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed.

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been

expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF

(ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 14/2011

Date of Institution : 31.03.2011

Date of Decision : 19.08.2013

Shri Eenam Thakur s/o Shri Karam Singh, r/o Village Kharotal, P.O. Shirar, Tehsil & Distt. Kullu, H.P. ....*Petitioner.*

*Versus*

1. Sh. John Sims, Managing Director, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P.

2. Sh. Ajay Dabra, Director, Corporate Affairs, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P.

....*Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. Kamal Kishore, Adv.
	: Miss Rajni Chauhan, Adv.
For the Respondent(s)	: Sh. Jitender Sharma, Adv.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Eenam Thakur S/O Sh. Karam Singh, Field Assistant by the management of Himalayan Ski Village Private Ltd. Regd. Office ‘SOHAM’ Village Shuru, Manali, Distt. Kullu, H.P. we.f. 16.12.2009 without serving charge sheet, conducting enquiry and without following the mandatory provisions of the Industrial Disputes Act, 1947, inspite of retainership letter dated-nil, issued by the management, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from above management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that an interview was conducted by the respondents in which he participated. He was selected, whereafter, the appointment letter dated 1st June, 2007 was issued in his favour by the respondents. He joined the service. As per clause 10 of the appointment letter, on completion of the probation period of six months, his services were regularized by the company/respondents vide confirmation letter dated 1st December, 2007. His (petitioner's) commitment for the company was appreciated. He continuously worked with the respondents up-to December, 2009 as Field Assistant (Mountain Sports Division), Manali, District Kullu. He completed 240 days of work in each and every calendar year of his employment. During the service tenure, his work and conduct was excellent. Neither any explanation was called for nor any show cause notice/warning letter etc. was issued to him. On 16th December, 2009, his services were terminated by the respondents wrongly and illegally by adopting the principle of hire and fire. Before the termination of his services, neither he was chargesheeted nor an inquiry was conducted against him. He was not given an opportunity of being heard. No notice was given to him before the termination of his services. Wages in lieu of the notice period and the retrenchment compensation were also not paid to him. Not only this, the respondents did not obtain necessary prior approval from the appropriate Government to retrench his services. On December 16, 2009, he (petitioner) was forcibly and arbitrarily refused the entry in the premises of the registered office of the company. The entry was blocked to discontinue his services in violation of the terms and conditions of the appointment letter dated 1st June, 2007. He was not paid the salary or stipend for the regular employment. He was kept idle for the unexplained reasons. For the last six months, the respondents have not paid any salary to him. He kept on visiting the office of the respondents time and again for re-employment and payment of his dues, but in vain. The respondents have violated the terms of the contract. From the date of his disengagement, he (petitioner) is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The respondents indulged in unfair labour practice. He is struggling hard to maintain himself and his dependants. A demand notice under Section 2-A of the Act was served upon the respondents by him, but of no avail.

As such, he (petitioner) prays that the verbal retrenchment order dated 16.12.2009 passed by the respondents be upset. The latters be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No.2 filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable as the project Himalayan Ski Village proposed to be started at Manali was not allowed to start by the Government of Himachal Pradesh. The project is standstill. The claim of the petitioner is not sustainable in the eyes of law in view of the acceptance of letter No.HSV/KV/Retainer/017 by him. He (petitioner) has suppressed

the material facts from the Court and has not come to the Court with clean hands. The petitioner has no locus standi to sue. He has no cause of action. The petition is bad in the eyes of law.

On merits, it has been owned that the services of the petitioner were engaged vide letter dated 1st June, 2007. He was initially appointed with probation of six months. The petitioner did not work up-to 16th December, 2009 as claimed. Actually, the petitioner was not in the employment of the company after 31.5.2009. In May 2009, he was offered the retainer-ship per letter No. HSV/KV/Retainer/017. The retainer-ship was accepted by the petitioner and other workmen. Now the petitioner cannot change his stance. On accepting the retainer-ship, the petitioner never attended the office after 31.5.2009. He cannot take advantage of his own lapse. After accepting the retainer-ship, the petitioner left the company of his own. He did not complete 240 days of work in any calendar year of his engagement as claimed. The services of the petitioner were never terminated in the manner as alleged by him. Due to the circumstances beyond their control, they (respondents) were forced not to start the project by the Government of Himachal Pradesh. The company was served a show cause notice for cancellation of the project by the Himachal Pradesh Government. It (company) had to approach the Hon'ble High Court of Himachal Pradesh against the show cause notice. The Hon'ble High Court passed an interim order against the cancellation of the project which continues till date. In the best interest of the petitioner and others, all the employees were given six months retainer-ship which started w.e.f. 01.6.2009. The letters qua the retainer-ship were accepted by all the employees (including the petitioner). It has been denied that a demand notice was issued by the petitioner. The management was forced to close the project due to negative approach of the Himachal Pradesh Government. Ultimately, the termination of the services of the petitioner was done and took place due to the circumstances created by the Government of Himachal Pradesh. The management had only handful employees. There was no need to get approval of the appropriate Government for the disengagement of their services. The provisions of Section 25-N of the Act are not attracted in this case. The petitioner was never refused entry into the office as claimed. He in-fact never visited the office after 31.5.2009. Since there was no work due to the forced closure of the project, the company was left with no option, but to disengage the services of the workmen. After offering the retainer-ship to the petitioner and other workmen for six months starting from 01.6.2009, the position remained the same. The company was left with no option except not to give any further retainer-ship to any of the employee. The petitioner was duly informed about the condition/circumstances prevailing in the company. Due to the dead lock with the Government, they (respondents) were forced to close the operation of the project. The petitioner is still persisting for the continuous work knowing well that no work at all is available with them (respondents). No provision of the Act has been infringed. The alleged disengagement of the services of the petitioner cannot be termed as retrenchment. The petition is meritless. The petitioner is not entitled to any relief. The project stands closed. In these circumstances, the answering respondent No.2 prays that the petition in hand be dismissed.

4. The reply submitted by the respondent No.2 has been adopted by the other respondent viz. respondent No.1.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that he ever accepted and signed the retainer-ship agreement. He never left the company of his own. He cannot be held responsible for the closure of the project. The respondents cannot shun their responsibilities by resorting to the unfair means. Alleged closing down of the project is a matter between the respondents and the Himachal Pradesh Government. The retainer-ship letter is denied for want of knowledge.

6. Per order dated 07.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 is illegal and unjustified as alleged? ..OPP

2. Whether the petitioner has a cause of action? ..*OPP*
3. Whether the petitioner has locus-standi to sue? ..*OPP*
4. Whether the petition is not maintainable in the present form? ..*OPR*
5. Whether the petitioner has not come to the Court with clean hands. If so, its effect? ..*OPR*
6. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? ..*OPR*
7. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No  
 Issue No. 2 : No  
 Issue No. 3 : No  
 Issue No. 4 : Yes  
 Issue No. 5 : Yes  
 Issue No. 6 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

9. Shri Eenam Thakur (petitioner) stepped into the witness box as PW2. In his affidavit Ex. PW2/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that the work of the project is totally closed from the month of February, 2008 onwards. He feigned ignorance about the fact that despite the closure of the project the respondents gave him the pay up-to the month of May, 2009 without doing any work. He denied that when the situation did not improve, the respondents kept him as a retainer for six months vide retainer-ship letter Ex. R3. Such letter does not bear his signatures. He denied that after June 2009, he is working somewhere else. He also denied that out of the greed and to gain the employment in a wrongful manner, he has instituted a phoney petition.

10. Shri Charan Dass (PW3) who is the petitioner in a similar reference bearing No.26/2011, supported the cause of the petitioner. Ex. PW3/A is the affidavit filed by him in terms of Order 18 Rule 4 CPC.

In the cross-examination, he admitted that presently no field assistant is working with the respondents. He also admitted that the project is lying closed from the month of February, 2008 onwards. He denied that to help his companion, he has given a wrong statement.

11. Shri Amar Nath Dhiman (PW1) is Labour Inspector, Kullu. He brought the requisitioned record and deposed that a demand notice was issued by the petitioner. Mandays chart Ex. PW1/A was produced by the respondents during the conciliation proceedings.

In the cross-examination, he stated that the copies of various letters viz. Exs. R1 to R3 were also produced by the respondents at the time of the conciliation.

12. Conversely, Shri Ajay Dabra (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongly.

13. Ex. PW2/B is the copy of the appointment letter dated 1st June, 2007 issued in favour of the petitioner by the respondents. It bears the signatures of Shri Ajay Dabra (respondent No.2).

14. Ex. PW2/C is the copy of the letter dated 01.12.2007 written to the petitioner by the respondents. It reveals that on successful completion of the probation period as per appointment letter dated 01.6.2007, the services of the petitioner were confirmed w.e.f. 01.12.2007.

15. Ex. PW2/D is the copy of the demand notice dated 17<sup>th</sup> December, 2009 served upon the respondents by the petitioner under Section 2-A of the Act.

16. Ex. R1 is the copy of a letter dated 01.12.2009 written by all the 15 Field Assistants (including the petitioner) to the respondent No.2. In this letter, it was mentioned that the retainer-ship period of six months has come to an end on 30.11.2009. All the 15 Field Assistants are present today i.e. on 01.12.2009. The company should inform them as to what is the status of their employment from 01.12.2009 onwards. They be also intimated as to what is the status of their retainer-ship for the last six months and when the retainer-ship amount will be paid to them.

17. Ex. R2 is another letter dated 08.12.2009 written by all the Field Assistants to the respondent No.2 in continuation of the letter dated 01.12.2009 (Ex. R1). In Ex. R2, it was mentioned that the queries raised by them per letter Ex. R1 have not been replied. They (workmen) are approaching the Labour Court for the redressal of their grievances.

18. Ex. R3 is the copy of letter No.HSV/KV/Retainer/017 written to the petitioner by the respondent No.1. It clarifies that because of the closure of the project, the company expressed its inability to keep the employees. The petitioner was offered retainer-ship from 1st June, 2009 onwards for a period of six months. It is/was mentioned in the letter that at the end of the six months period, the company shall review the situation and decide if this retainer-ship can be continued or not. The retainer amount of the petitioner was fixed as Rs.2,000/- per month beginning June 1, 2009. This letter of retainer-ship bears the signatures of the petitioner as a token of its acceptance.

19. Ex. R4 is the no dues/clearance certificate which was produced by the petitioner on 15.6.2009 before the respondents. In this certificate, a mention has been made that the individual is on retainer-ship.

20. Ex. R5 is the copy of the letter dated 15.12.2009 written by the respondent No.1 to the petitioner. Vide this letter, the petitioner was informed that his retainer-ship cannot be renewed further as no work is available. In the letter, it was also highlighted that the payment of last six months retainer-ship fee will be the last payment until HSV (Himalayan Ski Village) is allowed to proceed by the State of Himachal Pradesh.

21. Ex. R6 is the copy of the postal receipt. It evidences that the letter Ex. R5 was sent to the petitioner under registered cover.



22. Exts. R7 to R17 are the copies of the deeds of settlement dated 24th day of March, 2011 which were entered into between the 11 Field Assistants namely S/Sh. Singhi Ram and Kewal Ram etc. as well as the respondents.

23. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. Thus, as per the reference/notification issued by the appropriate Government, this Court is required to decide as to whether the verbal termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 in spite of the issuance of the retainer-ship letter by the management (respondents) is legal and justified or not?

24. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondents in contravention of the provisions of Section 9-A of the Act.

25. It is often said and rightly too that the men may tell lies, but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight.

26. It is the admitted case of the parties that the services of the petitioner were engaged as a Field Assistant. Appointment letter dated 1<sup>st</sup> June, 2007 (Ex. PW2/B) was issued in his favour. It is also an admitted fact that on the completion of the probation period of six months, the services of the petitioner were confirmed by the respondents per letter dated 1<sup>st</sup> December, 2007 (Ex. PW2/C).

27. From the evidence available on the record, it can be gathered that some dispute arose between the respondents/company and the Government of Himachal Pradesh because of which the work of the project (Himalayan Ski Village) came to a standstill somewhere in the beginning of the year 2008. Due to this reason, the company was not in a position to retain all the workmen. Despite the non availability of the work the petitioner remained on the rolls of the respondents up-to 31.5.2009 and was paid the wages/salary as per the appointment letter Ex. PW2/B. From 1st June, 2009, the petitioner was kept as a retainer on payment of the retainer- ship fee of Rs.2000/- every month per letter Ex. R3. The retainership period was of six months beginning 01.6.2009. As already mentioned Ex. R3 bears the signatures of the petitioner. It is well known that a person signing a document is presumed to agree to its contents. True it is that the petitioner has denied his signatures on Ex. R3. It appears to me that false stand has been taken by the petitioner with an ulterior motive taking into account the other evidence available on the file.

28. As mentioned earlier, clearance/no dues certificate dated 15.6.2009, the copy of which is Ex. R4, was submitted by the petitioner. It too, bears his signatures. In this certificate, it has been clearly mentioned that the individual is on retainer-ship. Not only this, Exts. R1 and R2 make it clear that the petitioner was duly aware of the fact that his period of retainer- ship came to an end on 30th November, 2009 on the completion of six months.

29. At the cost of reiteration, I will like to add that the retainership of the petitioner was not further renewed by the respondents after it came to an end on 30.11.2009. The petitioner was duly informed regarding the said fact vide letter dated 15.12.2009, the copy of which is Ex.R5. Admittedly, 15 Field Assistants (including the petitioner) employed by the respondents had raised the industrial dispute. Out of them, 11 Field Assistants compromised the matter vide settlement deeds Exs. R7 to R17. Only the matters relating to the petitioner and three other Field Assistants are before this Court.

30. Employing a person as retainer for six months on payment of the fixed emoluments per mensem cannot be termed as a regular employment. The same is in-fact contractual employment. The retainership/ contractual employment of the petitioner beginning June 1, 2009 came to an end

on 30th November, 2009. Non renewal of the agreement of retainer-ship or the contract of employment does not fall within the mischief of the term 'retrenchment' as per clause (bb) of Section 2(oo) of the Act.

31. That being so, it cannot be said that the termination of the services of the petitioner by the respondents is illegal and unjustified.

32. This issue is decided against the petitioner and in favour of his opponents.

#### ISSUES NO. 2 TO 4

33. Taking into account my findings on issue No.1 above, it is held that the petitioner has no cause of action. He has no locus standi to sue. The claim petition is not maintainable in the present form.

34. These issues are also decided against the petitioner.  
ISSUES NO. 5 AND 6

35. Keeping in view my discussions and findings on issue No.1, it can be safely said that the petitioner has suppressed the material facts from the Court. He has not approached the Court with clean hands. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

36. These issues too are decided against the petitioner and in favour of his adversaries.

#### *RELIEF*

#### (ISSUE NO.7)

37. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2013.

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 335/2009

Date of Institution : 23.5.2009

Date of Decision : 12.08.2013

Shri Fozi s/o Shri Narad, r/o Village Dhardala, P.O. Sihunta, Tehsil Bhatiat, District  
Chamba, (H.P.) ....Petitioner

*Versus*

The Executive Engineer, I&PH Division Dalhousie, District Chamba, H.P.

....Respondent

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Fozi S/O Sh. Narad by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 11/2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of December, 1994 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of December, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been reemployed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged? OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- |              |   |
|--------------|---|
| Issue No.1 : | Yes   |
| Issue No.2 : | Not pressed   |
| Issue No.3 : | No  |
| Issue No.4 : | Not pressed   |
| Issue No.5 : | Not pressed   |
| Relief. :    | Claim petition allowed in part vide operative portion of the Award. |

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Fouzi (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R- 1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged w.e.f. 03.12.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.30 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 03.12.1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 30 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000

new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO.3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 2, 4 AND 5

27. Not pressed

#### *RELIEF*

#### (ISSUE NO. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the

continuity and seniority in service from the date of his illegal termination i.e. 16/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 406/2009  
Date of Institution : 18.07.2009  
Date of Decision : 12.08.2013

Shri Gagan Singh s/o Shri Karam Singh, r/o Village & P.O. Morthu, Tehsil Bhattiyat,  
District Chamba, H.P. ....*Petitioner*

*Versus*

The Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P.

....*Respondent*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Gagan Singh S/O Shri Karam Singh by Executive Engineer, I.&P.H. Division Dalhousie, Distt. Chamba, H.P. w.e.f. 16-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”



2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the year 1994 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of 'last come first go' was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of November, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the

workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? *OPP*
2. Whether the petition is not maintainable in the present form? *OPR*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? *OPR*
4. Whether the petitioner has not come to the Court with clean hands as alleged? *OPR*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? *OPR*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

- |               |   |
|---------------|---|
| Issue No. 1 : | Yes   |
| Issue No. 2 : | Not pressed   |
| Issue No. 3 : | No  |
| Issue No. 4 : | Not pressed   |
| Issue No. 5 : | Not pressed   |
| Relief. :     | Claim petition allowed in part vide operative portion of the Award. |

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. Shri Gagan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex. R-2) was given to him by the respondent. Volunteered, the notice had

come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L. S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged on 17.11.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.26 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 17.11.1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 26 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus

Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

27. Not pressed.

### *RELIEF*

(ISSUE NO. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 16/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

(RAJAN GUPTA)

*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 257/2012

Date of Institution : 15.06.2012

Date of Decision : 17.08.2013

Shri Kamar Singh s/o Shri Palas Ram, r/o Village and P.O. Barang, Tehsil Sarkaghat,  
District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N. L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Kamar Singh S/O Shri Palas Ram, R/O Village and P.O. Barang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the month of November, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25- H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 27.8.2012, following issues were struck:-
  1. Whether the services of the petitioner were terminated by the respondent w.e.f. 08.07.2005 wrongly and illegally as alleged? OPP

2. Whether the reference is not maintainable in the present form? *OPR*
  3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? *OPR*
  4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? *OPR*
  5. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? *OPR*
  6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? *OPR*
  7. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Issue No.4 : Not pressed  
 Issue No.5 : Not pressed  
 Issue No.6 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Kamar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt.



Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4, 5 and 6

18. Not pressed.

ISSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

*RELIEF*

(ISSUE NO. 7)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs. 50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 40/2012

Date of Institution : 02.01.2012

Date of Decision : 17.08.2013

Shri Kamlesh Kumar s/o Shri Sonu Ram, r/o Village Banal, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Kamlesh Kumar S/O Shri Sonu Ram, R/O Village Banal, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 19.1.1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have

been re-engaged by the respondent. At the time of their reengagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25- H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 19.1.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.6.2012, following issues were struck:-
  1. Whether the termination of the services of the petitioner w.e.f. 08.07.2005 by the respondent is illegal and unjustified? *OPP*
  2. Whether the reference is not maintainable in the present form? *OPR*
  3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? *OPR*
  4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? *OPR*
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? *OPR*
  6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
 

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed
Issue No.5 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Kamlesh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. January, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of reengaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been

allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

#### *RELIEF*

(ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 334/2009  
Date of Institution : 23.05.2009  
Date of Decision : 12.08.2013

Shri Karnail Singh s/o Shri Duni Chand, r/o Village Naloh, P.O. Sihunta, Tehsil Bhattiyat,  
District Chamba, (H.P.) .....*Petitioner.*

*Versus*

The Executive Engineer, I & P H Division Dalhousie, District Chamba, H.P.  
.....*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent	: Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Karnail Singh S/O Sh. Duni Chand by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the year 1986 by the respondent and he worked as such up-to the year 1993. Thereafter, his (petitioner's) services were re-engaged in the month of August, 1995 and he served up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes



Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of July, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 13.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? *OPP*
2. Whether the petition is not maintainable in the present form? *OPR*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? *OPR*
4. Whether the petitioner has not come to the Court with clean hands as alleged? *OPR*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? *OPR*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed
Issue No.5 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Karnail Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). He does not know that the notice dated 09.10.2000 (Ex. R-4) was also given to him. Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the reemployment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner. 11. Ext. R-2 is the copy of notice dated 26.09.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 27.10.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 15.11.2000 worth Rs.765/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ext. R-4 is the copy of revised notice dated 09.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R- 4 unfolds that the services of the petitioner were disengaged w.e.f. 13.11.2000 (afternoon) due to the non-availability of the work and the funds.

14. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

15. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

16. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

17. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 1995 by the respondent.

19. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 13.11.2000 (afternoon) after issuing the notice Ex. R-4. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.75 of the list.

20. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999,

whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is July, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 75 of Ex. RW1/D.

22. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

24. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

28. Not pressed.

### *RELIEF*

(ISSUE NO.6)

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 13/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 301/2012

Date of Institution : 02.08.2012

Date of Decision : 29.08.2013

Shri Kewal Singh s/o Shri Prittam Singh, r/o Village and P.O. Gondpur Banehra, Tehsil  
Amb, District Una, H.P. . . . . *Petitioner.*

*Versus*

The Principal, D.A.V. Senior Secondary Public School, Ambota, Tehsil Amb, District Una, H.P. . Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.  
For the Respondent : Miss Seema Sharma, Adv.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

**“Whether the termination of services as Driver of Shri Kewal Singh S/O Shri Pritam Singh, R/O Village and P.O. Gondpur Banehra, Tehsil Amb, District Una, H.P. by the Principal, D.A.V. Senior Secondary Public School, Ambota, Tehsil Amb, District Una, H.P. w.e.f. 09- 07-2011 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”**

2. The case of the petitioner (as set out in the statement of claim/demand) is that the respondent/school/institution is working under the control of D.A.V. Managing Committee Chitragupt Road, New Delhi. Several educational institutions are run by the D.A.V. Managing Committee all over the country. The Managing Committee has its Standing Orders/Service Bye Laws which are applicable to all the institutions working under it including the respondent/institution. The respondent/ school is functioning since the year 1985. Teaching and non teaching staff is working in Ambota school from the year 1985 till date. The respondent/ institution has nine school buses. The same are used to pick up and drop the students. Transportation charges are collected by the school from the students by taking into account the distance covered in the bus for coming to and going away from the school. More than ten drivers and ten conductors have been engaged by the respondent for plying the buses. The Motor Transport Vehicle Act is applicable to the respondent/school. His (petitioner's) services were engaged by the respondent on temporary basis w.e.f. 15.9.2009. He worked up-to 02.5.2010. Thereafter, an advertisement was issued in the news papers by the respondent for the post of the driver. An interview was conducted on 02.5.2010 at 9.30 A.M. in the school premises by the respondent in which he (petitioner) participated. He was selected by the interview committee for the post of the driver and verbally directed to report for duty before 06.5.2010. He joined as a driver with the respondent on 03.5.2010. No appointment letter was issued in his name by the respondent/institution. He continuously worked as a driver up to 08.7.2011. The school remained closed from 09.7.2011 to 14.8.2011 due to the summer vacations. In the institution/school the teaching and non teaching staff have their union/association namely Himachal Pradesh Private School Avem Karamchari Sangh. The head office of the sangh is located at Palampur, District Kangra. The union is affiliated to State Bhartiya Mazdoor Sangh. A demand notice dated 1st June, 2010 was served upon the respondent by the union. Different types of demands have been raised by the union and the matter is pending decision before this Court. He (petitioner) is an active member of the union. During pendency of the general demand notice dated 01.6.2010 served by the union, his (petitioner's) services have been terminated by the respondent without the prior permission of this Court/Tribunal in violation of Section 33-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). On 14.8.2011, when the school opened after

the summer vacations, he (petitioner) reported for duty. He was not allowed to work by the respondent. The latter remarked that his services are no more required by the institution and the same have already been terminated w.e.f. 09.7.2011. His services have been disengaged due to the activities of the union. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted for the misconduct, if any. During the entire service tenure, his work and conduct was satisfactory. No complaint was received against him by the respondent/management. Before the disengagement of his services, one month pay in lieu of the notice period and the retrenchment compensation as envisaged under Section 25-F of the Act were not paid to him. No inquiry was conducted against him. He worked continuously from 03.5.2010 to 08.7.2011 and completed more than 240 days of work in a block of 12 calendar months preceding the date of his retrenchment. The services of two other drivers namely S/Sh. Sandeep Mankotia and Vijay Kumar were also terminated by the respondent/management alongwith him (petitioner). The respondent violated the principles of natural justice and bye-laws of the institution. After his termination, the respondent inserted an advertisement dated 01.8.2011 in the daily newspaper (Punjab Kesari) for appointing the driver(s) on contract basis. This clearly shows that his services were malafidely disengaged by the respondent/management to deprive him from continuity in service. The act and conduct of the management amounts to unfair labour practice as per Clause 10 of the Vth schedule appended to the Act. He has been victimized due to the union activities only. After his termination, Shri Pardeep Kumar r/o Village Ambota and Shri 246 Sandeep Kumar r/o Village Chalet were appointed as drivers in his place w.e.f. 16.8.2011. Before engaging new/fresh hands, an opportunity of reemployment was not afforded to him as per Section 25-H of the Act. In the service bye-laws of the respondent/institution, the service conditions of the employees have been specified. There is no provision in the service byelaws to appoint an employee on daily wage, consolidated or contract basis. All the appointments have been specified on regular basis in the regular pay scale as granted by the management to its employees. The pay and benefits of the Central Govt. employees are being given by the management to the employees of the D.A.V. institutions. He (petitioner) is entitled to the pay scale of a driver instead of the minimum wages from 03.5.2010 to 14.8.2011. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Act.

As such, he (petitioner) prays that the termination order dated 09.7.2011 passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the full back wages etc.

3. On notice, the respondent appeared. She filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has suppressed the true and material facts from the Court because of which he is not entitled to any relief. The petition is bad for non-joinder of a necessary party. This Court/Tribunal has no jurisdiction to entertain and decide the claim petition.

On merits, the below given facts stand admitted.

- (a) D.A.V. Managing Committee is running the educational institutions all over India.
- (b) The Managing Committee has framed its Standing Orders/Service Bye-Laws which are applicable to all the institutions working under it (including the respondent).
- (c) D.A.V. Senior Secondary Public School, Ambota, is functioning from the year 1985 onwards.

- (d) The school plies the buses for picking up and dropping the students on payment of the transportation charges.
- (e) More than 10 drivers and 10 conductors have been engaged for running the buses.
- (f) The petitioner was appointed on temporary basis w.e.f. 15.9.2009 and he worked up-to 02.5.2010.
- (g) An advertisement was issued in the newspaper for the post of the driver.
- (h) An interview was conducted on 02.5.2010 in the school premises.
- (i) The petitioner participated in the interview and was selected by the interview committee for the post of driver.
- (j) The claimant/petitioner was verbally directed to report for duties before 06.5.2010.
- (k) The petitioner joined the duty on 03.5.2010 and worked as a driver up-to 08.7.2011.
- (l) No appointment letter was issued in favour of the petitioner; and
- (m) The school remained closed from 09.7.2011 to 14.8.2011 due to the summer recess.

However, it has been pleaded that the petitioner was appointed purely on temporary basis as a driver on 03.5.2010 for 69 days. After 69 days, he was relieved on 10.7.2010. The relieving order was duly signed by the petitioner. A recruitment notice dated 10.8.2010 was issued by the institution (respondent). Such notice was circulated by pasting it on the notice board of the school. Per notice dated 10.8.2010, an interview for the post of driver on temporary basis for the period 13.8.2010 to 31.3.2011 was fixed. The petitioner appeared in the interview. After following the due process of selection, the petitioner was recruited against the temporary post of driver for a period of 231 days. He was relieved on 31.3.2011. The relieving order bears the signatures of the petitioner. After that, the petitioner moved an application for the post of the driver which was purely on contractual basis. Due process of recruitment was followed. The services of the petitioner were engaged for 98 days from 02.4.2011 to 08.7.2011. Appointment letter was issued in the name of the petitioner. He accepted the terms and conditions of the appointment after duly understanding them. The petitioner was employed purely on contract basis from 02.4.2011 to 08.7.2011. The school was then closed owing to the summer vacations. On 01.8.2011, she (respondent) got published an advertisement in the daily newspaper (Punjab Kesari) for the posts of drivers on contract basis. An interview as per the advertisement dated 01.8.2011 was held on 04.8.2011. The petitioner intentionally and willingly did not apply for the post of the driver for the reasons best known to him. On 14.8.2011, the petitioner was never told that his services are no more required by the institution. He (petitioner) was never removed from service as alleged. The appointment of the petitioner was contractual for a fixed/specific period. It automatically came to an end on the completion of the contract period/last working day of the contract. The services of the petitioner stand disengaged in consonance with the bye-laws of the institution. Neither the petitioner has been victimized nor any provision of the Act has been flouted. The fact that the services of S/Sh. Pardeep Kumar and Sandeep Kumar were engaged w.e.f. 16.8.2011 in place of the petitioner has not been specifically denied. The claim petition is false, frivolous and vexatious. The same is not maintainable. The petitioner did not complete 240 days of work as claimed. He is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.



4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that no appointment letter was given to him. At the time of the engagement of his services, no terms and conditions of service were settled. No relieving order was ever given to him. The drivers and conductors, who were working with him, were paid the salary and other benefits during the summer vacations. He was deliberately not allowed to join his duties after the summer recess. The advertisement dated 01.8.2011 issued by the respondent and the interview held on 04.8.2011 are/were not to his knowledge.

5. Per order dated 02.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 09.07.2011 is illegal and unjustified as alleged? . . .*OPP.*
2. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? . . .*OPR.*
3. Whether the petition is bad for non-joinder of the necessary party? . . .*OPR.*
4. Whether this Court has no jurisdiction to entertain and decide the matter as alleged? . . .*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed.

Issue No.4 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Kewal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had joined the service in Ambota School on 15.12.2009. He cannot produce any record to substantiate the said fact. He admitted that on 28.4.2010, the respondent had issued an advertisement in the newspaper to the effect that the posts of drivers and conductors are lying vacant. The willing candidates can apply and take part in the interview. He admitted that pursuant to the said advertisement, he had applied for the post of the driver and joined the service on 03.5.2010. Self stated, he was already working in the school. He denied that he was relieved from his duties before the school closed in the month of July, 2010 for summer vacations. Ex. R1 i.e. copy of the relieving order bears his signatures. He denied that he signed Ex. R1 after reading it and admitting its contents to be correct. He even denied that on 10.8.2010, an interview notice, the copy of which is Ex. R2 was displayed on the notice board of

the school by the respondent for employing the drivers and conductors on contract basis after the interview. He refuted that on 10.8.2010 after the interview, he was selected by the interview committee and his services were re-engaged on 13.8.2010. He admitted that he was relieved from his duties on 31.3.2011 and the relieving order Ex. R3 has been signed by him. Further, he admitted that the appointment letter, the copy of which is Ex. R4, was issued in his name by the respondent. Volunteered, the appointment letter was handed over to him on 15<sup>th</sup> August, 2011. He denied that after he was relieved from his duties on 31.3.2011, the school issued another advertisement for employing the drivers and conductors on contract basis. He controverted that he participated in the interview and was selected. He denied that the joining report dated 02.4.2011, the copy of which is Ex. R5, bears his signatures. He admitted that he was then relieved by the school authorities on 8<sup>th</sup> July, 2011. He even admitted that on 01.8.2011, the respondent/institution had issued an advertisement regarding the fact that the posts of drivers and conductors are lying vacant which are to be filled on contract basis. He feigned ignorance about the fact that the copy of the advertisement dated 1st August, 2011 is Ex. R6. He admitted that the interviews were fixed in the school premises on 04.8.2011 at 11.00 A.M. in which he did not take part. He has not produced any record to show that he is a member of the union of the drivers and conductors. He denied that he remained a contractual employee of the school from time to time. He also denied that before he joined the service, the terms and conditions of appointment were explained to him by the respondent/institution and he joined the duties only after admitting the same to be correct. Further, he denied that to gain the employment and other benefits in a wrongful manner, he has instituted a phoney petition.

9. Conversely, Smt. Rashmi Raj Biswal, Principal of the school (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by her.

In the cross-examination, she denied that on 09.7.2011, the services of the petitioner were disengaged in an unlawful manner. Self stated, the term of contractual appointment had come to an end. The benefit of summer vacations is not given to the non teaching staff of the school. Volunteered, school buses do not ply during such vacations as the children do not come to the school. She denied that the posts of drivers and conductors are permanent as well as the petitioner had worked for more than 240 days. She admitted that in the month of August, 2011, S/Sh. Sandeep Kumar and Pardeep Kumar were appointed as drivers. She stated of her own that an advertisement for conducting the interviews for the posts of drivers was issued in which the petitioner did not participate. She denied that if a person is selected for a particular post after the interview, he is not required to undergo the process of interview once again. Self stated, for the engagement of the contractual employees, the interviews are held time and again. She denied that the services of the petitioner were engaged up-to 31.3.2012 per appointment letter Ex. R4 and by doing the cutting in the said letter, it was mentioned that the services of the petitioner have been engaged only up-to 08.7.2011. Volunteered, the teaching staff is employed up-to 31st March i.e. the end of the session, whereas, the non teaching staff is engaged as per the requirement and the availability of the work. She admitted that an accident case is pending against S/Sh. Sandeep Kumar and Pardeep Kumar. The mishap resulted after their appointment. She denied that the services of the petitioner have been disengaged unlawfully.

10. Ex. RW1/B is the mandays chart/working days details relating to the petitioner.

11. Ex. RW1/C is the seniority list of the drivers and cleaners-cumconductors.

12. Ex. RW1/D is the copy of the proceedings of the meeting held on 5th December, 2001 by the D.A.V. College Managing Committee to consider the norms for placement in next higher scales of drivers working in D.A.V. Public/Model Schools.

13. Ex. RW1/E is the copy of Minutes of LMC meeting of the respondent/school held on 27.4.2010. The LMC (Local Management Committee) unanimously resolved and recommended to appoint fresh transport staff i.e. drivers and conductors from April, 2010 upto the date of beginning of monsoon break every year on trial basis. It was also decided by the LMC that if the work of the drivers and conductors is found satisfactory, their appointment may be extended from mid of August (on reopening of the school after monsoon break) till 31st March, 2010.

14. Ex. RW1/F is the flowchart depicting pay band and grade pay for various posts under 6th Pay Commission.

15. Ex. RW1/G is the statement of account issued by State Bank of India, Gondpur Banehra Branch, Tehsil Amb, relating to the petitioner.

16. Ex. PA is the copy of the service rules/bye-laws of the D.A.V. institutions.

17. The petitioner has not placed/exhibited on the record any document evidencing that his services were initially engaged on temporary basis by the respondent w.e.f. 15.9.2009 and he worked as such up-to 02.5.2010. As PW1, the petitioner stated that he joined the service on 15.12.2009 in the school (though in the statement of claim/demand the date of appointment is mentioned as 15.9.2009). The mandays chart Ex. RW1/B produced by the respondent has not been disputed by the petitioner. It shows that the services of the petitioner were initially engaged by the respondent in the month of May, 2010 and he worked upto July, 2011. In July 2011, the petitioner worked for 08 days only.

18. It is often said and rightly too that the men may tell lies, but the documents do not. It is the basic law that the documentary evidence as compared to the oral evidence has to be given weight.

19. From the evidence available on the record, it can be gathered that the petitioner worked as a driver with the respondent on contractual basis from time to time. The respondent used to get published advertisement(s) in the newspapers for holding an interview for appointing the drivers and conductors on contract basis. The petitioner used to participate in the interview. After the selection, he used to join his duties and on the completion of the contract period, he (petitioner) was relieved from his duties by the respondent time and again.

20. The petitioner (PW1) in his cross-examination admitted that he was relieved from his duties by the respondent on 8th July, 2011. He also admitted that the appointment letter Ex. R4 was issued in his favour by the respondent. Of course, he denied that the joining report dated 2nd April, 2011 (Ex. R5) which was submitted by him after the issuance of the appointment letter Ex. R4, bears his signatures.

21. Ex. R4 goes to show that the services of the petitioner were engaged as a driver on contract basis from 2nd April, 2011 to 8th July, 2011 on payment of the consolidated salary of Rs.5,171/- per month. As already mentioned, it is the admitted case of the petitioner that he was relieved from his duties by the respondent on 8th July, 2011 i.e. the day on which the term of the contractual appointment came to an end. Even if, in the appointment letter Ex. R4, it has been printed that the appointment of the petitioner shall be up-to 31st March, 2012, the same will not come to his rescue as it has been specifically mentioned in the appointment letter that the term of the appointment of the petitioner is from 2nd April, 2011 to 8<sup>th</sup> July, 2011 only. The respondent (RW1) has categorically stated that the services of the teaching staff are engaged till the end of the session i.e. 31<sup>st</sup> March. The school buses do not run during the summer vacations as the children do not come to the school. The non-teaching staff is employed as per the requirement and the

availability of the work. As the buses do not ply during the monsoon break, the question of engaging the services of the petitioner/driver by the respondent from 2nd April, 2011 to 31.3.2012 does not arise.

22. From the evidence available on the file, it becomes clear that the respondent/school used to issue the advertisement(s) in the newspapers from time to time for employing the drivers on contract basis. Walk-in-interview used to be held in which the petitioner used to participate. It is an admitted fact that after the petitioner was relieved of his duties on 08.7.2011, an advertisement dated 1st August, 2011 was got published in the daily newspaper (Punjab Kesari) by the respondent for appointing the drivers on contract basis. Ex. R6 is the copy of the said advertisement. Walk-in interview was scheduled for 4th August, 2011 at 11.00 A.M. in the school premises for the post of driver. The petitioner did not participate in the interview because of which he was not selected. S/Sh. Sandeep Kumar and Pardeep Kumar took part in the interview. They were selected and appointed as drivers by the respondent on contractual basis in the month of August, 2011. Since the petitioner failed to participate in the selection process, I fail to understand as to how it lies in his mouth to say that his services have been wrongly and illegally terminated by the respondent.

23. The assertion of the petitioner that the appointment letter Ex. R4 was delivered to him by the respondent on 15th August, 2011 does not appear to be true as he has not pleaded the said fact in the petition/statement of claim and the rejoinder. The contention of the petitioner that the joining report dated 2nd April, 2011 (Ex. R5) has not been signed by him also appears to be false since the joining report was submitted by the petitioner in the school on 02.4.2011 itself after the issuance of the appointment letter Ex.R4 in his name. So far as the rules/bye-laws Ex. PA relating to the employees of D.A.V. Managing Committee are concerned, the same relate to only the regular employees. The evidence adduced by the parties makes it abundantly clear that the petitioner was only a contractual employee/driver who served the respondent/school in different spells from May, 2010 to 8th July, 2011 on payment of the consolidated salary per mensem. The term of contractual employment of the petitioner as per the appointment letter Ex. R4 had come to an end on 8th July, 2011. After that, the petitioner did not participate in the interview for the post of driver on contract basis which took place on 4th August, 2011. Non renewal of the term of the contractual employment does not come within the mischief of the word 'retrenchment' as per clause (bb) of Section 2 (oo) of the Act.

24. That being so, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally dispensed with by the respondent. The latter has not flouted any provision of the Act.

25. To be fair to the Id. authorized representative and the counsel for the petitioner, now I proceed to discuss the rulings cited by them.

- (i) *Paramjit Singh vs. Director, Public Instructions & Ors.*, 2011 LLR 116 (SC). This case relates to the termination of a probationer on account of unsatisfactory performance.
- (ii) *G. Venkat Rao vs. Depot Manager, A.P.S.R.T.C., Visakhapatnam Depot, Visakhapatnam and Anr.*, 2009 LLR 152 (AP). This case pertains to the termination of a bus driver who was given contractual appointment without holding an inquiry against him for the alleged misconduct.
- (iii) *M/s. National Aluminium Co. Ltd. vs. Deepak Kumar Panda & Ors.*, 2002 LLR 928 (SC). This case pertains to a contractual employee whose contractual appointment was not extended as he failed to produce reliable proof of having requisite qualification, whereas, the persons junior to him were absorbed in service on regular basis. There is nothing to show that any person junior to the petitioner (Shri Kewal Singh) has been absorbed in regular service by the respondent institution.

26. The observations made in the above quoted rulings in no way benefit the petitioner. It seems that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. This issue is decided against the petitioner and in favour of his adversary.

#### ISSUE NO. 2

28. Taking into account my findings on issue No.1 above, it can be safely said that the petitioner has suppressed the true and material facts from the Court. For this reason too, he is required to be shown the doors of the Court.

29. This issue is also decided against the petitioner.

#### ISSUES NO. 3 AND 4

30. Not pressed.

#### *RELIEF*

#### (ISSUE NO. 5)

31. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 491/2009  
Date of Institution : 20.11.2009  
Date of Decision : 12.08.2013

Shri Krishan Kumar s/o Shri Dhani Ram, r/o Village & P.O. Manoutho, Tehsil & District  
Chamba, H.P. . . .Petitioner.

*Versus*

The Executive Engineer, I&PH Division Dalhousie, District Chamba, H.P. . .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

**“Whether termination of the services of Shri Krishan Kumar S/O Shri Dhani Ram by Executive Engineer, I&P.H. Division Dalhousie, Distt. Chamba, H.P. w.e.f. 26-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”**

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of September, 1994 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act. As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of September, 1994. His mandays chart is annexure R-I. Due to the shortage of the

funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 26.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been reemployed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether the petition is not maintainable in the present form? . . .*OPR.*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . .*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .*OPR.*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

## ISSUE NO.1

8. Shri Krishan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 21.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 26.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 21.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.



17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R- 1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the year 1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 26.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.14 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the year of initial appointment of the petitioner as per Ex. R1 is 1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 14 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of

which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

27. Not pressed

#### *RELIEF*

(ISSUE NO.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 26/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 296/2012

Date of Institution : 26.7.2012

Date of Decision : 07.08.2013

Shri Madan Kumar s/o Shri Rajesh Kumar, r/o Village Baggi, P.O. Binola, Tehsil Sadar,  
District Bilaspur, H.P. . *Petitioner.*

*Versus*

- i) The Managing Director, H.P. Finance Corporation, New Himrus Bhawan Circular Road, Shimla-1 (H.P.)
- ii) The Assistant Manager, H.P. Finance Corporation, 202/3, Palace Colony, Mandi, District Mandi, H.P. . *Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. S.C. Vaid, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Madan Kumar S/O Sh. Rajesh Kumar, Village-Baggi, P.O. Binola, Tehsil-Sadar, Distt. Bilaspur, H.P. by i) The Managing Director, H.P. Finance Corporation, New Himrus Bhawan, Circular Road, Shimla-1 ( H.P.) ii) The Assistant Manager, H.P. Finance Corporation, 202/3, Palace Colony, Mandi, Distt. Mandi w.e.f. 08.5.2009 vide letter no.HPFC-MND- 2008-09-51, datede- 11.5.2009, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent No.2 on 15.5.2002 as a daily waged Chowkidar (watchman) in a unit/factory i.e. M/s Ess Bee Packagers (P) Ltd., Plot No.3, Industrial Area, Bilaspur. The property of the said unit was attached. He (petitioner) and Shri Dhan Raj were employed by the respondents to watch and ward the building and the vehicles etc. of the above noted unit. He (petitioner) worked up-to 08.5.2009 as well as completed 240 days of work in each and every calendar year of his employment. The respondents did not give him the national holidays like 26th January, 15th August and 2nd October as well as the weekly offs and national festival holidays which amounts to unfair labour practice. On 8th May, 2009, his services were terminated by the respondents without assigning any reason. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. The respondents did not take the permission from the specified authority for the disengagement of his services. Work of permanent nature is available with the respondents who carry on the business in the entire State. From the date of his termination, he is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial

Disputes Act, 1947 (14 of 1947 'the Act' for short). As such, he (petitioner) prays that the termination order dated 08.5.2009 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the services of the petitioner were engaged on contractual basis as daily waged watchman in the taken over unit of M/s Ess Bee Packagers (P) Ltd., Plot No.3, Industrial Area, Bilaspur from 15.5.2002 to 08.5.2009 under Section 29 of the State Financial Corporations Act, 1951. An agreement of temporary employment was executed by the petitioner on 15.5.2002 itself. According to this agreement, the petitioner had to perform his duties for a limited period and his engagement was co-terminus with the sale of the industrial unit under Section 29 of the Act ibid in which his services were engaged. As and when the taken over unit is sold by the Corporation, the services of the petitioner were to be discontinued automatically as per the terms and conditions of the agreement for temporary employment. The petitioner cannot claim regularization of his services. The Corporation does not have any regular vacancy of chowkidars engaged or to be engaged in taken over units. No rules or regulations have been framed as the duties which are assigned to the chowkidars appointed in taken over unit are of casual nature. Since the petitioner was employed on contract basis, the completion of 240 days of continuous service in a year will not entitle him to re-engagement or the regularization of his services. There is no industrial activity in the closed/sick units at the time its assets are taken over by the Corporation. The petitioner was appointed for watch and ward purposes in a taken over and closed unit. He cannot be deemed to be an employee/workman of the industrial concern under the Act. The services of the chowkidars engaged on contractual basis in the taken over units are coterminus with the sale of the unit. The disengagement of the services of the petitioner does not amount to retrenchment as per Section 2 (oo) (bb) of the Act. The Corporation is in fact, not an employer of the petitioner. No salary was paid to the petitioner by the Corporation (respondents) out of its budget for the period he served as a Chowkidar. The salary paid to the petitioner was debited to the loan account of the concerned industrial unit. He was treated as a Chowkidar to watch and ward the assets on behalf of the industrial concern in which he was engaged on contractual basis. The Corporation is considered as owner of the assets of a unit for limited purpose only under Section 29 of the State Financial Corporations Act, 1951. The Corporation is incurring losses since the year 1998. In view of its poor financial position, the Corporation is adjusting its regular employees in other departments/organizations on secondment basis to curtail the administrative expenses. The petitioner is not their (respondents) employee.

On merits, it has been owned that the services of the petitioner were engaged as a Chowkidar on 15.5.2002 and he worked as such up-to 08.5.2009 in the taken over unit. However, it has been pleaded that the petitioner was temporarily employed. His services were rightly disengaged per letter dated 11.5.2009. The petitioner cannot be termed as a workman under the Act. No provision of the Act has been infringed. They (respondents) did not indulge in any unfair labour practice. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Per order dated 10.12.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 08.05.2009 is illegal and unjustified? . . .*OPP*.
2. Whether the services of the petitioner were engaged on contractual basis as alleged. If so, its effect? . . .*OPR*.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Madan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged by the respondents in a sick taken over unit. He also admitted that no industrial activity used to take place in the unit during his duty hours. He was simply required to guard the property of the unit. He admitted that no application was moved by him before the respondents for employment. He admitted that before joining the service, he had signed the agreement of temporary employment Ex. R1 which bears his signatures. Self stated, Ex. R1 was neither read over to him nor he read the same. He did not lodge any complaint to the effect that the contents of Ex. R1 were not read over and explained to him by his adversaries. He denied that his services have been rightly terminated in accordance with the terms and conditions of the agreement Ex. R1. He also denied that to gain the employment and due to the greed, he has instituted a phoney petition.

10. Conversely, Shri Mehar Singh, Manager, H.P. Financial Corporation, Shimla testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply.

In the cross-examination, he denied that Ex. R1 is a forged document. He also denied that the services of the petitioner were disengaged in a wrongful manner.

11. Ex. PW1/B is the copy of the termination notice dated 11.5.2009 served upon the petitioner by the respondents. It depicts that the services of the petitioner were terminated w.e.f. 08.5.2009 as the Corporation sold the assets of the taken over unit i.e. M/s Ess Bee Packaging Pvt. Ltd. and handed over the possession of the same to the purchaser.

12. Ex. RW1/B is the copy of the judgment dated September 10, 1996 pronounced by the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in O.A. No.3282/94 titled as Kali Ram Raghuvanshi versus H.P. Financial Corporation.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a Chowkidar in the unit which was taken over by the respondents/Corporation under Section 29 of the State Financial Corporations Act, 1951. From the contents of the statement of claim/demand and the reply, it can be gathered that the petitioner served as a Chowkidar from 15.5.2002 to 08.5.2009. Admittedly, the services of the petitioner were terminated w.e.f. 08.5.2009 per letter/notice dated 11.5.2009 the copy of which is Ex. PW1/B.

14. Ex. R1 is the copy of the Asthai Niyukti Anuband Patra (agreement of temporary employment on contract basis) which was executed by the petitioner in favour of the respondents. The petitioner (PW1) during his cross-examination admitted that Ex. R1 bears his signatures and before joining the duty Ex. R1 was prepared. Legally speaking, a person signing the document is presumed to know and agree to its contents. Conditions No. 3, 4 and 7 of Ex. R1 read thus:—

- “3. द्वितीय पक्ष की चौकीदारी का कार्य सिर्फ अस्थाई तौर पर दिया गया है। जब तक अधिग्रहण की गई सम्पत्ति हि0 प्र0 वित्तीय निगम अधिनियम 1951 की धारा 29 के अधीन विक्रय नहीं हो जाती या उसका कब्जा मालिक को वापिस नहीं किया जाता, अधिग्रहण की गई इकाई की सम्पत्ति विक्रय होने के तुरन्त पश्चात् द्वितीय पक्ष की सेवायें समाप्त समझी जायेंगी, यहाँ यह भी स्पष्ट किया जाता है कि द्वितीय पक्ष की सेवायें केवल अधिग्रहण के विक्रय होने या उसका कब्जा मालिक को वापिस नहीं किया जाता तक ही सीमित है। उसके पश्चात् द्वितीय पक्ष का प्रथम पक्ष पर किसी प्रकार का दावा नहीं होगा।
4. यह कि प्रथम पक्ष को पूर्ण अधिकार होगा कि द्वितीय पक्ष की सेवायें कभी भी समाप्त कर सकता है। यानि कि अधिग्रहण की गई सम्पत्ति के विक्रय से पहले भी।
7. यह कि द्वितीय पक्ष की नियुक्ति राज्य वित्तीय निगम अधिनियम 1951 की धारा 29 के अधीन कब्जे में ली गई इकाई की रक्षा व निगरानी हेतु अस्थाई तौर पर समझी जायेगी, तथा यह नियुक्ति हि0 प्र0 वित्तीय निगम में की गई नियुक्ति नहीं मानी जायेगी तथा यह नियुक्ति अनुबन्ध पत्र आज दिनांक 15/5/2002 को दोनों पक्षों ने मान लिया है, तथा इस प्रकार हस्ताक्षर कर दिये हैं”।

15. As already mentioned, the services of the petitioner were dispensed with by the respondents in accordance with the above noted condition(s) as is clear from the contents of the termination notice/letter Ex. PW1/B. Taking into account the terms and conditions of the engagement of the petitioner as well as the evidence available on the file, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his services were wrongly and illegally terminated by the respondents. In my considered opinion, the termination of the services of the petitioner by the respondents does not amount to retrenchment in view of Section 2 (oo) (bb) of the Act.

16. Such being the situation, it is held that the services of the petitioner were engaged on contractual basis only. No relationship of master and servant exists between the parties. The claim petition is not maintainable in the present form. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. No relief can be granted to him. His (petitioner's) claim is fallacious.

17. These issues are decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO.3)

18. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/- (Three thousand only).

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 404/2009  
Date of Institution : 18.07.2009  
Date of Decision : 12.08.2013

Shri Madan Singh s/o Shri Budhi Singh, r/o Village Motla, P.O. Dhullara, Sub Tehsil Sihunta, District Chamba, H.P. . .*Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. . .*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.  
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Madan Singh S/O Shri Budhi Singh by the Executive Engineer, I.&P.H. Division Dalhousie, Distt. Chamba, H.P. w.e.f. 09- 11- 2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the year 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact

adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of 'last come first go' was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of September, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been reemployed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.



5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .*OPP*.
2. Whether the petition is not maintainable in the present form? . . .*OPR*.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . .*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .*OPR*.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR*.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No.2	: Not pressed
Issue No.3	: No
Issue No.4	: Not pressed
Issue No.5	: Not pressed
Relief.	: Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Madan Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their

services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R- 1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of September, 1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.90 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is September, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to

the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 90 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

27. Not pressed

RELIEF (ISSUE NO.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 09/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 206/2010  
Date of Institution : 22.7.2010  
Date of Decision : 03.08.2013

Mrs. Madhu Malhotra w/o Shri Ramesh Malhotra, r/o House No.27/08, Darmayana  
Mohalla, Mandi Town, Distt. Mandi, H.P. 175001. .*Petitioner.*

*Versus*

The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P.  
. .*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.

Sh. Sunder Goel, Adv.

For the Respondent : Sh. M.P. Sharma, Adv.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P. to withdraw the allowances and reducing salary to initial basic pay w.e.f. 01.10.2005, without serving charge sheet and without holding inquiry and thereby changing the service conditions to work on reduced salary, without giving notice as per section 9A of the Industrial Disputes Act, 1947 to Smt. Madhu Malhotra W/O Sh. Ramesh Malhotra and finally retrenchment of her services w.e.f. 01.7.2006 without complying with the provisions of Section 25 F of the Act *ibid* and not giving her consideration for re-employment by the employer from the date new appointment is made, in violation of provisions of section 25-G & H of the Act *ibid* is legal and justified? If not, to what back wages, seniority, service benefits and relief Smt. Madhu Malhotra W/O Sh. Ramesh Malhotra is entitled to from the above concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that she was appointed as a clerk by the Board of Directors of the respondent-bank on regular basis w.e.f. 30.6.1990. Initial basic pay plus allowances as admissible under the H.P. State Co-operative Bank Limited were payable to her (petitioner). By taking recourse to the provisions of Section 37 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter referred to as ‘the Societies Act’), the Registrar, Cooperative Societies, Himachal Pradesh after dissolution of the Board of Directors of the Mandi Urban Co-operative Bank Ltd., Mandi, appointed his nominee(s) viz. Gazetted Officers in the rank of Deputy/Joint Registrar from the Co-operative Department of Himachal Pradesh Government on account of the failing financial health of the bank on the basis of the action taken by the Reserve Bank of India. Presently, the bank is administered by a Board of Administrators consisting of three persons from the above said department. She (petitioner) is/was governed in respect of her service conditions by the service rules of the staff of the Mandi Urban Co-operative Bank Ltd. framed with the approval of the Registrar, Co-operative Societies, Himachal Pradesh, as required under the Societies Act. Rule 29 of the service rules provides that in case of retrenchment or premature retirement every employee shall be given three months’ notice before the retrenchment or premature retirement or three months salary in lieu thereof with benefit of the provident fund on such salary. An employee will also be entitled to the encashment of the un-availed earned leave to her credit at the time of the retrenchment or premature retirement. The Board of Administrators of the bank passed resolution No.3, dated 22.9.2005, illegally and without any justification. Vide the said resolution, it was decided to restrict her (petitioner’s) pay to the basic pay only and disallow all other allowances to her as given from time to time w.e.f. 1<sup>st</sup> October, 2005. This decision of the Board of Administrators changed her (petitioner’s) service conditions illegally, unilaterally, arbitrarily, capriciously and against the provisions of Section 9-A of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) as well as the principles of natural justice. She (petitioner) has been punished without being heard per resolution No.3, dated 22.9.2005. The punishment has been handed over to her without any inquiry and the proven charge of misconduct. Not only this, by invoking Rule 29 of the service rules, the Board of Administrators of the bank has terminated her services with effect from 01.7.2006. Vide order dated 30.6.2006, her services have been disengaged w.e.f. 01.7.2006 after paying three months basic pay in lieu of the notice period. She had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. Her (petitioner’s) services have been retrenched on account of surplus-age which fact is emphatically denied. Sufficient funds are available with the respondent/bank. After her disengagement, some persons were employed/re-employed on contract basis by the respondent. She was not given an opportunity of reemployment which amounts to unfair labour practice. The retrenchment compensation was not paid to her at the time of the termination of her services. She

(petitioner) preferred a Civil Writ Petition before the Hon'ble High Court of Himachal Pradesh for the redressal of her grievances. The said writ petition was dismissed as withdrawn for want of jurisdiction. Thereafter, a demand notice was served upon the respondent by her. Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Mandi Zone, Mandi, but in vain. The respondent failed to inform the concerned authorities regarding the disengagement of her services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “1. The order passed on the basis of Resolution No.3 dated 22.9.2005 whereby the applicant/petitioner's pay was reduced to basic pay while denying all other permissible allowances be set-aside.
2. The permissible allowances over basic pay of the applicant/petitioner be restored ante September/October, 2005 and the arrears thereof allowed with interest @ 9% per annum.
3. The retrenchment order dated 3.4.2006 issued by the Administrator of the Bank beheld illegal, void and the same be quashed/set-aside.
4. The applicant/petitioner be granted consequential benefit etc. treating the period of forced unemployment as on duty, & undisturbed seniority.
5. Any other relief that Ld. Court may think fit, proper and just in facts and circumstances may also be granted and justice done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a clerk on regular basis by the Board of Directors in the month of June, 1990 in the pay scale of Rs.570-25-695-30-845-35-915-40-1075-50-1175/-. It stands admitted that the Board of Directors of the bank was dissolved by the Registrar, Co-operative Societies, Himachal Pradesh and he appointed his nominees to administer the affairs of the bank. The fact that the bank has framed the service rules has not been disputed. The services of the petitioner were rightly terminated as per Rule 29. Three months salary in lieu of the notice period was given to her (petitioner). Per resolution No.3, dated 22.9.2005, it was decided to restrict the pay of the petitioner to the basic pay only w.e.f. 01.10.2005. This resolution was rightly passed. Actually, the bank incurred heavy losses. Crores of rupees have eroded on account of misfeasance of the officials of the bank. Financial position of the bank became worst. To tide over the situation, the Board of Administrators had no option except to curtail the pay scale. It was resolved to fix the monthly salary on the initial scale of pay. The depositors raised hue and cry time and again to the effect that they are suffering because of the negligence of the officers/employees of the bank who were enjoying at their (depositors) cost by depriving them of their deposits. The bank is under restrictions. Day to day banking stands aborted. Only loan recovery process is initiated and the employees are surplus. The action has been taken by the bank (respondent) in public interest. Retrenchment order/notice dated 30.6.2006 was duly served upon the petitioner. She was also paid three months salary in lieu of the notice period. The provisions of the Act are not applicable. Two persons on contract basis were employed who are computer trained. In view of Sections 72 (1) (c) and 73 of the Societies Act, this Court has no jurisdiction to hear and decide the matter. Only the Registrar of Co-operative Societies has the jurisdiction to deal with this matter. It stands admitted that the writ petition instituted by the petitioner was dismissed as withdrawn for want of jurisdiction. The bank is not an industry as defined under Section 2(j) of the Act. No provision of

the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the bank suffered heavy losses due to the fault of its officials. She (petitioner) was in no way involved in the framing of the policies of the bank, its functioning and allied matters. She performed the duties assigned to her from time to time by the Bank Manager sincerely and efficiently. The self styled Board of Administrators of the bank adopted the policy of hire and fire which is impermissible. She (petitioner) has been thrown out of the service without approval of the Registrar of the Cooperative Societies.

5. Vide order dated 05.07.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.7.2006 is violative of the provisions of Sections 25-G and 25-H of the I.D. Act as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reduction of the salary of the petitioner w.e.f. 01.10.2005 without any charge-sheet or enquiry is violative of the provisions of the I.D. Act as alleged. If so, to what effect? . . .*OPP.*
3. Whether this Court has no jurisdiction to entertain the reference as alleged. If so, to what effect? . . .*OPR.*
4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes Partly No  
 Issue No.2 : No  
 Issue No.3 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.3

8. This issue is taken up by me first for discussion as my findings of the same will impinge the outcome of other issues.

9. While taking me through the provisions of Sections 72 and 73 of the Societies Act, the Id. counsel for the respondent/bank argued that this Court has no jurisdiction to hear and dispose of the matter. Only the Registrar of Co-operative Societies is competent to decide the controversy. On the other hand, the Id. counsel for the petitioner urged that the provisions of Sections 72 and 73 of the Societies Act are not attracted in the instant case. His client being a 'workman' and the respondent being an 'industry', this Court has the jurisdiction to deal with the matter.

10. To my mind, the contention of the Id. counsel for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent bank,

does not touch the constitution, management, or the business of a Co-operative Society viz. the bank. It is an admitted fact that against the termination order/notice dated 30.6.2006, the petitioner had preferred an appeal under Section 93 of the Societies Act before the Registrar, Co-operative Societies, Himachal Pradesh. Per letter dated 04.8.2008, the Registrar of the Co-operative Societies informed the petitioner/appellant that the appeal is not maintainable under the provisions of the Societies Act.

11. Strictly speaking, a dispute between a Cooperative Society and its workmen does not relate to the actual business of the Cooperative Society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Cooperative Societies functioning under the Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards dismissal from service cannot be determined by the Registrar. The Registrar of the Cooperative Societies has no power to order the reinstatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

12. In fact, this question is no longer *res integra*. In *Bangalore Water Supply & Sewerage Board vs. A. Rajappa*, 1978 LIC 467 (SC), it has been laid that the Co-operative Societies are the industries.

13. Our Hon'ble High Court in CWP No. 906 of 2005, decided on April 9, 2007 titled as *The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors.* and CWP No. 781 of 2005 titled as *The Dehra Friends Co-operative Transport Society, Petitioner versus The Presiding Officer, Labour Court, Respondents*, decided in the month of May, 2007, has opined that the Labour Court has the power and authority to decide the reference and the disputes like the one in question.

14. It is, thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

15. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 1 AND 2

16. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

17. The petitioner Smt. Madhu Malhotra stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that the bank has framed its service rules and she was removed from service as per Rule 29 of such rules. She also admitted that in the month of October, 2004 certain restrictions were imposed on the bank by the Reserve Bank of India because of which its functioning came to a halt. She feigned ignorance about the fact that the bank suffered losses of crores of rupees. She admitted that an inquiry was conducted against all the employees of the bank. She denied that her salary was reduced by the Board of Administrators only after the inquiry. She does not know that vide resolution No.1, dated 21.4.2006, the salary of all the employees of the bank was fixed at the initial scale(s). She is not aware of the fact that a meeting of the general house had taken place on 17.3.2006 in which the budget of the bank was not approved and it was noticed that maximum amount is being spent on the salary of the employees. She has no



knowledge that the bank was computerized in the year 2007. She does not know that her services were disengaged by the bank in public interest being surplus.

18. Conversely, Shri Harvilas Behl, Assistant Manager, The Mandi Urban Co-operative Bank Ltd., Mandi, testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent. In the cross-examination, he stated that the Administrators of the bank were appointed by the Registrar of the Co-operative Societies. The salary of the petitioner was reduced w.e.f. 01.10.2005. Approval qua reduction of salary was done in the general house meeting which took place in the month of March, 2006. No notice under Section 9A of the Act was served upon the petitioner regarding change of her service conditions. Before the termination of the services of the petitioner, neither any notice was given to her nor the retrenchment compensation was paid. After the disengagement of the services of the petitioner, the bank needed a clerk and a computer operator, who were employed. Shri Hemant Kapoor was appointed as a computer clerk since he was senior amongst the employees whose services were terminated. He does not know that Smt. Madhu Malhotra and Shri Hemant Kapoor joined the service on a single day and the former is elder or younger in age to Shri Hemant Kapoor. When the services of the petitioner were disengaged, Shri Sunil Kumar was serving as a peon in the bank. Shri Sunil Kumar (Peon) has been promoted as a clerk. Before employing new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. He denied that he has given a phoney statement.

19. Ex. PW1/B is the copy of an office order. It depicts that vide resolution No.3, dated 22.9.2005, the Board of Administrators of the respondent/bank decided to fix the monthly salary of the bank employees at the basic pay without any allowances w.e.f. 01.10.2005 considering the weak and poor financial health of the bank as well as its increasing losses in 301 order to curtail the establishment cost. The name of the petitioner figures in this office order.

20. Ex. PW1/C is the copy of the retrenchment order/notice dated 30.6.2006 served upon the petitioner and seven other employees by the Board of Administrators of the bank. It unfolds that the Board of Administrators resolved per resolution No.8, dated 27.6.2006, to terminate the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution. A cheque was given to the petitioner as three months salary in lieu of the notice period. It was also mentioned that the petitioner shall be entitled to the other monetary benefits as per the service rules.

21. Ex. R1 is the copy of the service rules for the employees of the Mandi Urban Co operative Bank Ltd., Mandi, Himachal Pradesh.

22. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide:

- (i) Whether reducing the salary of the petitioner to the initial basic pay w.e.f. 01.10.2005 is violative of Section 9A of the Act or not? and
- (ii) Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is legal and valid or not?

23. At this stage, I will like to highlight that there are certain unmarked/un-exhibited documents on the record. A few documents were produced by the parties at the time of the arguments. They have been appended to the file of reference No.201 of 2010 (Shri Parveen Kumar Vaidya vs. The Administrator). These documents go to show that the monthly emoluments of the

employees of the bank (including the petitioner) were fixed at their current respective basic pay(s) without any allowances w.e.f. 01.10.2005 vide resolution No.3, dated 22.9.2005, passed by the Board of Administrators as a measure of punishment. Office order Ex. PW1/B was issued only after the passing of the resolution dated 22.9.2005. All the documents are being looked into and considered by me for the just and proper decision of the case particularly when the petitioner (PW1) in her cross-examination admitted that an inquiry was conducted against all the bank employees.

24. Here I will also like to mention that the petitioner has concealed the material facts from the Court that she was charge-sheeted for her misconduct, an inquiry was conducted against her in which she took part, reasonable opportunity of being heard was afforded to her and the charges framed against her for causing huge losses to the bank directly/indirectly stood proved, where after, the Board of Administrators exercising the powers contained in Rule 21(4) of the service rules (Ex. R1) imposed the penalty to down grade the petitioner to the lower scale (initial scale) with immediate effect. Against the penalty imposed by the Board of Administrators, the petitioner had preferred an appeal as per Rule 22 of the rules *ibid* before the appellate authority (Registrar of the Co-operative Societies). The said appeal was partly allowed by the appellate authority. De-novo inquiry on the charges already framed against the bank employees was ordered by the appellate authority. The petitioner did not participate in the de-novo inquiry. The findings of the earlier Inquiry Officer and the punishment awarded to her vide resolution No.3, dated 22.9.2005, were not disturbed by the officer, who carried out the de-novo inquiry, and the Board of Administrators of the bank as is evident from the proceedings dated 22.9.2009.

25. In para 3 of the statement of claim/demand, the petitioner has pleaded that she is/was governed in respect of her service conditions by the service rules (Ex. R1) as framed by the respondent/bank. As already mentioned, the penalty of reduction in pay was imposed upon the petitioner after she was found guilty of the misconduct and causing huge losses to the bank. It is not the case of the petitioner that fair inquiry was not conducted against her. No allegation of victimization or violation of the principles of natural justice has been put forth by the petitioner against the respondent. Since the salary of the petitioner was reduced as a measure of punishment after due inquiry in which she participated, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her service conditions were changed by the respondent in contravention of the provisions contained in Section 9A of the Act. The petitioner cannot canvass that there is a violation of Section 9A of the Act by her opponent.

26. Now, I proceed to decide the other limb of controversy between the parties i.e. as to whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is illegal and invalid or not?

27. There is no denial of the fact that the respondent bank has framed its service rules. They stand duly approved by the Board of Directors of the bank and the Registrar of Co-operative Societies, Himachal Pradesh. Rule 29 reads thus:—

“Retirement and retrenchment: In case of retrenchment or pre-mature retirement every employee shall be given three month’s notice before his retrenchment or premature retirement or three month’s salary in lieu thereof with benefit of Provident Fund on such salary. Such employee will also be entitle to salary and allowances for the period of earned leave at his credit”.

28. Admittedly, the services of the petitioner were retrenched by the respondent under the above noted rule per notice dated 30.6.2006, the copy of which is Ex. PW1/C. The retrenchment notice (Ex. PW1/C) reveals that the Board of Administrators of the bank had resolved vide

resolution No.8, dated 27.6.2006, to disengage the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution (surplus-age). In the notice of retrenchment, it was mentioned that the retrenchee shall be entitled to the monetary benefits as per para/Rule 29 of the service rules of the bank. A cheque was also forwarded to the petitioner on account of three months salary in lieu of the notice period. It is not the case of the petitioner/claimant that the notice of retrenchment was not received by her or the cheque has not been got encashed upto now. Further, it is not the version of the respondent that the provisions of Chapter VB of the Act are/were applicable to the bank and the services of the petitioner were retrenched in consonance with Section 25-N of the Act.

29. In para 5 of the statement of claim/demand, the petitioner has categorically pleaded that she had completed 240 days of work in a block of 12 calendar months preceding the date of her termination i.e. 01.7.2006. This fact has not been denied specifically by the respondent in the corresponding para of the reply. Moreover, the petitioner (PW1) stated in the examination-in-chief that she had completed 240 days of service in a block of 12 calendar months anterior to the date of her retrenchment. This fact has not been challenged by the respondent at the time of the cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side.

30. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

31. There is not even an iota of evidence on the record to show that the petitioner/workman was paid the compensation at the time of her retrenchment as envisaged under Section 25-F (b) of the Act. For this reason, the final termination of the services of the petitioner by the respondent with effect from 01.7.2006 is patently wrong and illegal.

32. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as per Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature.

In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to

pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

33. There is another reason for which the termination of the services of the petitioner by the respondent is illegal. In para 6 of the reply, the respondent has pleaded that two computer trained persons were employed in the bank on contract basis. The names of these two persons have not been disclosed by the respondent-bank. From the questions posed during the cross-examination to the petitioner (PW1) by the Id. counsel for the respondent, it can be gathered that the respondent bank was computerized somewhere in the year 2007 i.e. after the termination of the services of the petitioner. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by her adversary in terms of Section 25-H of the Act. The respondent failed to adhere to the provisions of this Section.

34. While testifying in the Court as PW1, the petitioner has given her age as 46 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

35. Such being the situation, I have no hesitation to conclude that the respondent has not flouted the provisions of Section 9A of the Act. The reduction in salary of the petitioner w.e.f. 01.10.2005 is legal and justified. However, the termination of the services of the petitioner by the respondent is bad in the eyes of law.

36. These issues are decided accordingly.

*RELIEF*

(ISSUE NO.4)

37. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner regarding reduction of her salary in a wrongful manner being meritless fails. The same is hereby dismissed. However, the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 1st July, 2006 except

back wages. It is clarified that the services of the petitioner will be re-engaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of her termination to the date of reinstatement. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August,

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 204/2010  
Date of Institution : 22.7.2010  
Date of Decision : 03.08.2013

Shri Manish Kapoor s/o Shri P.C. Kapoor, r/o House No.89/06, Darmayana Mohalla, Palakha Street, Mandi Town, Distt. Mandi, H.P. (175001). . .Petitioner.

Versus

The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P. . .Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
Sh. Sunder Goel, Adv.  
For the Respondent : Sh. M.P. Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P. to withdraw the allowances and reducing salary to initial basic pay w.e.f. 01.10.2005, without serving charge sheet and without holding inquiry and

thereby changing the service conditions to work on reduced salary, without giving notice as per section 9A of the Industrial Disputes Act, 1947 to Sh. Manish Kapoor S/O Sh. P.C. Kapoor and finally retrenchment of her services w.e.f. 01.7.2006 without complying with the provisions of Section 25-F of the Act *ibid* and not giving her consideration for re-employment by the employer from the date new appointment is made, in violation of provisions of section 25-G & H of the Act *ibid* is legal and justified? If not, to what back wages, seniority, service benefits and relief Sh. Manish Kapoor S/O Sh. P.C. Kapoor is entitled to from the concerned employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was appointed as a clerk by the Board of Directors of the respondent-bank on regular basis in the month of September, 1992. Initial basic pay plus allowances as admissible under the H.P. State Cooperative Bank Limited were payable to him (petitioner). By taking recourse to the provisions of Section 37 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as 'the Societies Act'), the Registrar, Co-operative Societies, Himachal Pradesh after dissolution of the Board of Directors of the Mandi Urban Co-operative Bank Ltd., Mandi, appointed his nominee(s) viz. Gazetted Officers in the rank of Deputy/Joint Registrar from the Co-operative Department of Himachal Pradesh Government on account of the failing financial health of the bank on the basis of the action taken by the Reserve Bank of India. Presently, the bank is administered by a Board of Administrators consisting of three persons from the above said department. He (petitioner) is/was governed in respect of his service conditions by the service rules of the staff of the Mandi Urban Co-operative Bank Ltd. framed with the approval of the Registrar, Cooperative Societies, Himachal Pradesh, as required under the Societies Act. Rule 29 of the service rules provides that in case of retrenchment or premature retirement every employee shall be given three months' notice before his retrenchment or premature retirement or three months salary in lieu thereof with benefit of the provident fund on such salary. An employee will also be entitled to the encashment of the unavailed earned leave to his credit at the time of the retrenchment or premature retirement. The Board of Administrators of the bank passed resolution No.3, dated 22.9.2005, illegally and without any justification. Vide the said resolution it was decided to restrict his (petitioner's) pay to the basic pay only and disallow all other allowances to him as given from time to time w.e.f. 1<sup>st</sup> October, 2005. This decision of the Board of Administrators changed his (petitioner's) service conditions illegally, unilaterally, arbitrarily, capriciously and against the provisions of Section 9-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as the principles of natural justice. He (petitioner) has been punished without being heard per resolution No.3, dated 22.9.2005. The punishment has been handed over to him without any inquiry and the proven charge of misconduct. Not only this, by invoking Rule 29 of the service rules, the Board of Administrators of the bank has terminated his services with effect from 01.7.2006. Vide order dated 30.6.2006, his services have been disengaged w.e.f. 01.7.2006 after paying three months basic pay in lieu of the notice period. He had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. His (petitioner's) services have been retrenched on account of surplus-age which fact is emphatically denied. Sufficient funds are available with the respondent/bank. After his disengagement, some persons were employed/re-employed on contract basis by the respondent. He was not given an opportunity of reemployment which amounts to unfair labour practice. The retrenchment compensation was not paid to him at the time of the termination of his services. He (petitioner) preferred a Civil Writ Petition before the Hon'ble High Court of Himachal Pradesh for the redressal of his grievances. The said writ petition was dismissed as withdrawn for want of jurisdiction. Thereafter, a demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Mandi Zone, Mandi, but in vain. The respondent failed to inform the concerned authorities regarding the disengagement of his services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “1. The order passed on the basis of Resolution No.3 dated 22.9.2005 whereby the applicant/petitioner’s pay was reduced to basic pay while denying all other permissible allowances be set-aside.
2. The permissible allowances over basic pay of the applicant/petitioner be restored ante September/October, 2005 and the arrears thereof allowed with interest @ 9% per annum.
3. The retrenchment order dated 3.4.2006 issued by the Administrator of the Bank be held illegal, void and the same be quashed/set-aside.
4. The applicant/petitioner be granted consequential benefits etc. treating the period of his forced unemployment as on duty, & undisturbed seniority.
5. Any other relief that Ld. Court may think fit, proper and just in facts and circumstances may also be granted and justice done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a clerk on regular basis by the Board of Directors on 01.10.1992 in the pay scale of Rs.570-25-695-30-845-35-915-40-1075-50-1175/-. It stands admitted that the Board of Directors of the bank was dissolved by the Registrar, Cooperative Societies, Himachal Pradesh and he appointed his nominees to administer the affairs of the bank. The fact that the bank has framed the service rules has not been disputed. The services of the petitioner were rightly terminated as per Rule 29. Three months salary in lieu of the notice period was given to him (petitioner). Per resolution No.3, dated 22.9.2005, it was decided to restrict the pay of the petitioner to the basic pay only w.e.f. 01.10.2005. This resolution was rightly passed. Actually, the bank incurred heavy losses. Crores of rupees have eroded on account of misfeasance of the officials of the bank. Financial position of the bank became worst. To tide over the situation, the Board of Administrators had no option except to curtail the pay scale. It was resolved to fix the monthly salary on the initial scale of pay. The depositors raised hue and cry time and again to the effect that they are suffering because of the negligence of the officers/employees of the bank who were enjoying at their (depositors) cost by depriving them of their deposits. The bank is under restrictions. Day to day banking stands aborted. Only loan recovery process is initiated and the employees are surplus. The action has been taken by the bank (respondent) in public interest. Retrenchment order/notice dated 30.6.2006 was duly served upon the petitioner. He was also paid three months salary in lieu of the notice period. The provisions of the Act are not applicable. Two persons on contract basis were employed who are computer trained. In view of Sections 72 (1) (c) and 73 of the Societies Act, this Court has no jurisdiction to hear and decide the matter. Only the Registrar of Co-operative Societies has the jurisdiction to deal with this matter. It stands admitted that the writ petition instituted by the petitioner was dismissed as withdrawn for want of jurisdiction. The bank is not an industry as defined under Section 2(j) of the Act. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the bank suffered heavy losses due to the fault of its officials. He (petitioner) was in no way involved in the framing of the policies of the bank, its functioning and allied matters. He performed the duties

assigned to him from time to time by the Bank Manager sincerely and efficiently. The self styled Board of Administrators of the bank adopted the policy of hire and fire which is impermissible. He (petitioner) has been thrown out of the service without approval of the Registrar of the Cooperative Societies.

5. Vide order dated 05.07.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.7.2006 is violative of the provisions of Sections 25-G and 25-H of the I. D. Act as alleged. If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the reduction of the salary of the petitioner w.e.f. 01.10.2005 without any charge-sheet or enquiry is violative of the provisions of the I. D. Act as alleged. If so, to what effect? . . .*OPP.*
3. Whether this Court has no jurisdiction to entertain the reference as alleged. If so, to what effect? . . .*OPR.*
4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : No

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

#### ISSUE NO.3

8. This issue is taken up by me first for discussion as my findings of the same will impinge the outcome of other issues.

9. While taking me through the provisions of Sections 72 and 73 of the Societies Act, the Id. counsel for the respondent/bank argued that this Court has no jurisdiction to hear and dispose of the matter. Only the Registrar of Co-operative Societies is competent to decide the controversy. On the other hand, the Id. counsel for the petitioner urged that the provisions of Sections 72 and 73 of the Societies Act are not attracted in the instant case. His client being a 'workman' and the respondent being an 'industry', this Court has the jurisdiction to deal with the matter.

10. To my mind, the contention of the Id. counsel for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent bank, does not touch the constitution, management, or the business of a Co-operative Society viz. the bank. It is an admitted fact that against the termination order/notice dated 30.6.2006, the petitioner had preferred an appeal under Section 93 of the Societies Act before the Registrar, Co-operative Societies, Himachal Pradesh. Per letter dated 04.8.2008, the Registrar of the Co-operative Societies informed the petitioner/appellant that the appeal is not maintainable under the provisions of the Societies Act.



11. Strictly speaking, a dispute between a Cooperative Society and its workmen does not relate to the actual business of the Cooperative Society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Cooperative Societies functioning under the Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards dismissal from service cannot be determined by the Registrar. The Registrar of the Cooperative Societies has no power to order the reinstatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

12. In fact, this question is no longer *res integra*. In *Bangalore Water Supply & Sewerage Board vs. A. Rajappa*, 1978 LIC 467 (SC), it has been laid that the Co-operative Societies are the industries.

13. Our Hon'ble High Court in CWP No. 906 of 2005, decided on April 9, 2007 titled as *The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors.* and CWP No. 781 of 2005 titled as *The Dehra Friends Co-operative Transport Society, Petitioner versus The Presiding Officer, Labour Court, Respondents*, decided in the month of May, 2007, has opined that the Labour Court has the power and authority to decide the reference and the disputes like the one in question.

14. It is, thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

15. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 1 AND 2

16. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

17. The petitioner Shri Manish Kapoor stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the bank has framed its service rules. He admitted that he was retrenched, but he does not know under which rule. He also admitted that in the month of October, 2004 certain restrictions were imposed on the bank by the Reserve Bank of India because of which its functioning came to a halt. He feigned ignorance about the fact that the bank suffered losses of crores of rupees. He admitted that he is working somewhere else on contract basis. He admitted that an inquiry was conducted against all the employees of the bank including him. He also admitted that thereafter the salary of all the employees of the bank was fixed at the initial scale(s). He is not aware of the fact that a meeting of the general house had taken place on 17.3.2006 in which the budget of the bank was not approved and it was noticed that maximum amount is being spent on the salary of the employees. He does not know that his services were disengaged by the bank in public interest being surplus.

18. Conversely, Shri Harvilas Behl, Assistant Manager, The Mandi Urban Co-operative Bank Ltd., Mandi, testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent. In the cross-examination, he stated that the Administrators of the bank were appointed by the Registrar of the Co-operative Societies. The salary of the petitioner was reduced w.e.f. 01.10.2005. Approval qua reduction of salary was done in the general house meeting which took place in the month of

March, 2006. No notice under Section 9A of the Act was served upon the petitioner regarding change of his service conditions. Before the termination of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. After the disengagement of the services of the petitioner, the bank needed a clerk and a computer operator, who were employed. Shri Hemant Kapoor was appointed as a computer clerk since he was senior amongst the employees whose services were terminated. He does not know that Smt. Madhu Malhotra and Shri Hemant Kapoor joined the service on a single day and the former is elder or younger in age to Shri Hemant Kapoor. When the services of the petitioner were disengaged, Shri Sunil Kumar was serving as a peon in the bank. Shri Sunil Kumar (Peon) has been promoted as a clerk. Before employing new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. He denied that he has given a phoney statement.

19. Ex. PW1/B is the copy of an office order. It depicts that vide resolution No.3, dated 22.9.2005, the Board of Administrators of the respondent/bank decided to fix the monthly salary of the bank employees at the basic pay without any allowances w.e.f. 01.10.2005 considering the weak and poor financial health of the bank as well as its increasing losses in order to curtail the establishment cost. The name of the petitioner figures in this office order.

20. Ex. PW1/C is the copy of the retrenchment order/notice dated 30.6.2006 served upon the petitioner and seven other employees by the Board of Administrators of the bank. It unfolds that the Board of Administrators resolved per resolution No.8, dated 27.6.2006, to terminate the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution. A cheque was given to the petitioner as three months salary in lieu of the notice period. It was also mentioned that the petitioner shall be entitled to the other monetary benefits as per the service rules.

21. Ex. R1 is the copy of the service rules for the employees of the Mandi Urban Co operative Bank Ltd., Mandi, Himachal Pradesh.

22. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide:

- (i) Whether reducing the salary of the petitioner to the initial basic pay w.e.f. 01.10.2005 is violative of Section 9A of the Act or not? and
- (ii) Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is legal and valid or not?

23. At this stage, I will like to highlight that there are certain unmarked/un-exhibited documents on the record. A few documents were produced by the parties at the time of the arguments. They have been appended to the file of reference No.201 of 2010 (Shri Parveen Kumar Vaidya vs. The Administrator). These documents go to show that the monthly emoluments of the employees of the bank (including the petitioner) were fixed at their current respective basic pay(s) without any allowances w.e.f. 01.10.2005 vide resolution No.3, dated 22.9.2005, passed by the Board of Administrators as a measure of punishment. Office order Ex. PW1/B was issued only after the passing of the resolution dated 22.9.2005. All the documents are being looked into and considered by me for the just and proper decision of the case particularly when the petitioner (PW1) in his cross-examination admitted that an inquiry was conducted against all the bank employees (including him).

24. Here I will also like to mention that the petitioner has concealed the material facts from the Court that he was charge-sheeted for his misconduct, an inquiry was conducted against him in which he took part, reasonable opportunity of being heard was afforded to him and the charges framed against him for causing huge losses to the bank directly/indirectly stood proved, where after, the Board of Administrators exercising the powers contained in Rule 21(4) of the service rules (Ex. R1) imposed the penalty to down grade the petitioner to the lower scale (initial scale) with immediate effect. Against the penalty imposed by the Board of Administrators, the petitioner had preferred an appeal as per Rule 22 of the rules *ibid* before the appellate authority (Registrar of the Co-operative Societies). The said appeal was partly allowed by the appellate authority. De-novo inquiry on the charges already framed against the bank employees was ordered by the appellate authority. The petitioner did not participate in the de-novo inquiry. The findings of the earlier Inquiry Officer and the punishment awarded to him vide resolution No.3, dated 22.9.2005, were not disturbed by the officer, who carried out the de-novo inquiry, and the Board of Administrators of the bank as is evident from the proceedings dated 22.9.2009.

25. In para 3 of the statement of claim/demand, the petitioner has pleaded that he is/was governed in respect of his service conditions by the service rules (Ex. R1) as framed by the respondent/bank. As already mentioned, the penalty of reduction in pay was imposed upon the petitioner after he was found guilty of the misconduct and causing huge losses to the bank. It is not the case of the petitioner that fair inquiry was not conducted against him. No allegation of victimization or violation of the principles of natural justice has been put forth by the petitioner against the respondent. Since the salary of the petitioner was reduced as a measure of punishment after due inquiry in which he participated, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his service conditions were changed by the respondent in contravention of the provisions contained in Section 9A of the Act. The petitioner cannot canvass that there is a violation of Section 9A of the Act by his opponent.

26. Now, I proceed to decide the other limb of controversy between the parties i.e. as to whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is illegal and invalid or not?

27. There is no denial of the fact that the respondent bank has framed its service rules. They stand duly approved by the Board of Directors of the bank and the Registrar of Co-operative Societies, Himachal Pradesh. Rule 29 reads thus:-

“Retirement and retrenchment: In case of retrenchment or pre-mature retirement every employee shall be given three month’s notice before his retrenchment or premature retirement or three month’s salary in lieu thereof with benefit of Provident Fund on such salary. Such employee will also be entitle to salary and allowances for the period of earned leave at his credit”.

28. Admittedly, the services of the petitioner were retrenched by the respondent under the above noted rule per notice dated 30.6.2006, the copy of which is Ex. PW1/C. The retrenchment notice (Ex. PW1/C) reveals that the Board of Administrators of the bank had resolved vide resolution No.8, dated 27.6.2006, to disengage the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution (surplus-age). In the notice of retrenchment, it was mentioned that the retrenchee shall be entitled to the monetary benefits as per para/Rule 29 of the service rules of the bank. A cheque was also forwarded to the petitioner on account of three months salary in lieu of the notice period. It is not the case of the petitioner/claimant that the notice of retrenchment was not received by him or the cheque has not been got encashed uptil now. Further, it is not the version of the respondent that the provisions of Chapter VB of the Act are/were applicable to the bank and the services of the petitioner were retrenched in consonance with Section 25-N of the Act.

29. In para 5 of the statement of claim/demand, the petitioner has categorically pleaded that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.7.2006. This fact has not been denied specifically by the respondent in the corresponding para of the reply. Moreover, the petitioner (PW1) stated in the examination-in-chief that he had completed 240 days of service in a block of 12 calendar months anterior to the date of his retrenchment. This fact has not been challenged by the respondent at the time of the cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side.

30. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

31. There is not even an iota of evidence on the record to show that the petitioner/workman was paid the compensation at the time of his retrenchment as envisaged under Section 25-F (b) of the Act. For this reason, the final termination of the services of the petitioner by the respondent with effect from 01.7.2006 is patently wrong and illegal.

32. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as per Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature. In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b).

Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

33. There is another reason for which the termination of the services of the petitioner by the respondent is illegal. In para 6 of the reply, the respondent has pleaded that two computer trained persons were employed in the bank on contract basis. The names of these two persons have not been disclosed by the respondent-bank. From the statement made by RW1, it can be gathered that the computer operators were engaged in the year 2007 i.e. after the termination of the services of the petitioner. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by his adversary in terms of Section 25-H of the Act. The respondent failed to adhere to the provisions of this Section.

34. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages. Otherwise too, the petitioner (PW1) admitted that now a days he is working somewhere else on contract basis. Therefore, I am not even inclined to grant him the continuity and seniority in service.

35. Such being the situation, I have no hesitation to conclude that the respondent has not flouted the provisions of Section 9A of the Act. The reduction in salary of the petitioner w.e.f. 01.10.2005 is legal and justified. However, the termination of the services of the petitioner by the respondent is bad in the eyes of law.

36. These issues are decided accordingly.

### *RELIEF*

(ISSUE NO.4)

37. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner regarding reduction of his salary in a wrongful manner being meritless fails. The same is hereby dismissed. However, the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith except back wages. It is clarified that the services of the petitioner will be re-engaged by the respondent within a period of three months from today failing which he (petitioner) shall be entitled to the seniority, continuity in service and wages from the date of his termination to the date of reinstatement. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms. 39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 386/2009

Date of Institution : 18.7.2009

Date of Decision : 12.08.2013

Shri Netar Singh s/o Shri Karam Chand, r/o Village Bithal, P.O. Karghat, Tehsil Sihunta, District Chamba, (H.P.) . .*Petitioner.*

*Versus*

The Executive Engineer, I&PH Division Dalhousie, District Chamba, H.P. . .*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Netar Singh S/O Sh. Karam Chand by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 11/2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of October 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25 N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether the petition is not maintainable in the present form? . . .*OPR.*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . .*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? . . .*OPR.*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—  
  
Issue No.1 : Yes  
Issue No.2 : Not pressed  
Issue No.3 : No  
Issue No.4 : Not pressed  
Issue No.5 : Not pressed  
Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Netar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.



14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R- 1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged w.e.f. 23.10.1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.99 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 23.10.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 99 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

### ISSUES NO. 2, 4 AND 5

27. Not pressed

### *RELIEF*

#### (ISSUE NO.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 26/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 201/2010  
Date of Institution : 30.6.2010  
Date of Decision : 03.08.2013

Shri Parveen Kumar Vaidya s/o Shri Manohar Lal Vaidya, r/o House No.25/08, Bangla  
Mohalla, Mandi Town, Mandi, H.P.-175001. ....*Petitioner.*

*Versus*

The Administrator, The Mandi Urban Co-operative Bank Ltd., Mandi, Distt. Mandi, H.P.  
...*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
Sh. Sunder Goel, Adv.

For the Respondent : Sh. M.P. Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P. to withdraw the allowances and reducing salary to initial basic pay w.e.f. 01.10.2005, without any charge sheet, and without holding inquiry and thereby changing the service conditions to work on reduced salary, without giving notice as per section 9A of the Industrial Disputes Act, to Sh. Parveen Kumar Vaidya S/O Sh. Manohar Lal Vaidya and finally retrenchment of his services w.e.f. 01.7.2006 without complying with the provisions of Section 25-F of the Act *ibid* and not giving him consideration for re-employment by the employer from the date new appointment is made, in violation of provisions of section 25-G & H of the Act *ibid* is legal and justified? If not, to what back wages, seniority, service

benefits and relief Sh. Parveen Kumar Vaidya S/O Sh. Manohar Lal Vaidya is entitled to from the above concerned employers?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was appointed as a clerk by the Board of Directors of the respondent-bank on regular basis in the month of September, 1992. Initial basic pay plus allowances as admissible under the H.P. State Cooperative Bank Limited were payable to him (petitioner). By taking recourse to the provisions of Section 37 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as 'the Societies Act'), the Registrar, Co-operative Societies, Himachal Pradesh after dissolution of the Board of Directors of the Mandi Urban Co-operative Bank Ltd., Mandi, appointed his nominee(s) viz. Gazetted Officers in the rank of Deputy/Joint Registrar from the Co-operative Department of Himachal Pradesh Government on account of the failing financial health of the bank on the basis of the action taken by the Reserve Bank of India. Presently, the bank is administered by a Board of Administrators consisting of three persons from the above said department. He (petitioner) is/was governed in respect of his service conditions by the service rules of the staff of the Mandi Urban Co-operative Bank Ltd. framed with the approval of the Registrar, Cooperative Societies, Himachal Pradesh, as required under the Societies Act. Rule 29 of the service rules provides that in case of retrenchment or premature retirement every employee shall be given three months' notice before his retrenchment or premature retirement or three months salary in lieu thereof with benefit of the provident fund on such salary. An employee will also be entitled to the encashment of the unavailed earned leave to his credit at the time of the retrenchment or premature retirement. The Board of Administrators of the bank passed resolution No.3, dated 22.9.2005, illegally and without any justification. Vide the said resolution it was decided to restrict his (petitioner's) pay to the basic pay only and disallow all other allowances to him as given from time to time w.e.f. 1<sup>st</sup> October, 2005. This decision of the Board of Administrators changed his (petitioner's) service conditions illegally, unilaterally, arbitrarily, capriciously and against the provisions of Section 9-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as the principles of natural justice. He (petitioner) has been punished without being heard per resolution No.3, dated 22.9.2005. The punishment has been handed over to him without any inquiry and the proven charge of misconduct. Not only this, by invoking Rule 29 of the service rules, the Board of Administrators of the bank has terminated his services with effect from 01.7.2006. Vide order dated 30.6.2006, his services have been disengaged w.e.f. 01.7.2006 after paying three months basic pay in lieu of the notice period. He had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. His (petitioner's) services have been retrenched on account of surplus-age which fact is emphatically denied. Sufficient funds are available with the respondent/bank. After his disengagement, some persons were employed/re-employed on contract basis by the respondent. He was not given an opportunity of reemployment which amounts to unfair labour practice. The retrenchment compensation was not paid to him at the time of the termination of his services. He (petitioner) preferred a Civil Writ Petition before the Hon'ble High Court of Himachal Pradesh for the redressal of his grievances. The said writ petition was dismissed as withdrawn for want of jurisdiction. Thereafter, a demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Mandi Zone, Mandi, but in vain. The respondent failed to inform the concerned authorities regarding the disengagement of his services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"1. The order passed on the basis of Resolution No. 3 dated 22.9.2005 whereby the applicant/petitioner's pay was reduced to basic pay while denying all other permissible allowances be set-aside.

2. The permissible allowances over basic pay of the applicant/petitioner be restored ante September/October, 2005 and the arrears thereof allowed with interest @ 9% per annum.

3. The retrenchment order dated 3.4.2006 issued by the Administrator of the Bank be held illegal, void and the same be quashed/set-aside.

4. The applicant/petitioner be granted consequential benefit etc. treating the period of forced unemployment as on duty, & undisturbed seniority.

5. Any other relief that Ld. Court may think fit, proper and just in facts and circumstances may also be granted and justice done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a clerk on regular basis by the Board of Directors on 01.10.1992 in the pay scale of Rs.570-25-695-30-845-35-915-40-1075-50-1175/-. It stands admitted that the Board of Directors of the bank was dissolved by the Registrar, Cooperative Societies, Himachal Pradesh and he appointed his nominees to administer the affairs of the bank. The fact that the bank has framed the service rules has not been disputed. The services of the petitioner were rightly terminated as per Rule 29. Three months salary in lieu of the notice period was given to him (petitioner). Per resolution No.3, dated 22.9.2005, it was decided to restrict the pay of the petitioner to the basic pay only w.e.f. 01.10.2005. This resolution was rightly passed. Actually, the bank incurred heavy losses. Crores of rupees have eroded on account of misfeasance of the officials of the bank. Financial position of the bank became worst. To tide over the situation, the Board of Administrators had no option except to curtail the pay scale. It was resolved to fix the monthly salary on the initial scale of pay. The depositors raised hue and cry time and again to the effect that they are suffering because of the negligence of the officers/employees of the bank who were enjoying at their (depositors) cost by depriving them of their deposits. The bank is under restrictions. Day to day banking stands aborted. Only loan recovery process is initiated and the employees are surplus. The action has been taken by the bank (respondent) in public interest. Retrenchment order/notice dated 30.6.2006 was duly served upon the petitioner. He was also paid three months salary in lieu of the notice period. The provisions of the Act are not applicable. Two persons on contract basis were employed who are computer trained. In view of Sections 72 (1) (c) and 73 of the Societies Act, this Court has no jurisdiction to hear and decide the matter. Only the Registrar of Co-operative Societies has the jurisdiction to deal with this matter. It stands admitted that the writ petition instituted by the petitioner was dismissed as withdrawn for want of jurisdiction. The bank is not an industry as defined under Section 2(j) of the Act. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the bank suffered heavy losses due to the fault of its officials. He (petitioner) was in no way involved in the framing of the policies of the bank, its functioning and allied matters. He performed the duties assigned to him from time to time by the Bank Manager sincerely and efficiently. The self styled Board of Administrators of the bank adopted the policy of hire and fire which is impermissible. He (petitioner) has been thrown out of the service without approval of the Registrar of the Cooperative Societies.

5. Vide order dated 05.07.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.7.2006 is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? *OPP.*
2. Whether the reduction of the salary of the petitioner w.e.f. 01.10.2005 without any charge-sheet or enquiry is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what effect? *OPP.*
3. Whether this Court has no jurisdiction to entertain the reference as alleged. If so, to what effect? *OPR.*
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : No

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO. 3

8. This issue is taken up by me first for discussion as my findings of the same will impinge the outcome of other issues.

9. While taking me through the provisions of Sections 72 and 73 of the Societies Act, the Id. counsel for the respondent/bank argued that this Court has no jurisdiction to hear and dispose of the matter. Only the Registrar of Co-operative Societies is competent to decide the controversy.

On the other hand, the Id. counsel for the petitioner urged that the provisions of Sections 72 and 73 of the Societies Act are not attracted in the instant case. His client being a 'workman' and the respondent being an 'industry', this Court has the jurisdiction to deal with the matter.

10. To my mind, the contention of the Id. counsel for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent bank, does not touch the constitution, management, or the business of a Co-operative Society viz. the bank. It is an admitted fact that against the termination order/notice dated 30.6.2006, the petitioner had preferred an appeal under Section 93 of the Societies Act before the Registrar, Co-operative Societies, Himachal Pradesh. Per letter dated 04.8.2008, the Registrar of the Co-operative Societies informed the petitioner/appellant that the appeal is not maintainable under the provisions of the Societies Act.

11. Strictly speaking, a dispute between a Cooperative Society and its workmen does not relate to the actual business of the Cooperative Society and, therefore, does not touch its business.

A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Cooperative Societies functioning under the Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards dismissal from service cannot be determined by the Registrar. The Registrar of the Cooperative Societies has no power to order the reinstatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

12. In fact, this question is no longer res integra. In Bangalore Water Supply & Sewerage Board vs. A. Rajappa, 1978 LIC 467 (SC), it has been laid that the Co-operative Societies are the industries.

13. Our Hon'ble High Court in CWP No. 906 of 2005, decided on April 9, 2007 titled as The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors. and CWP No. 781 of 2005 titled as The Dehra Friends Co-operative Transport Society, Petitioner versus The Presiding Officer, Labour Court, Respondents, decided in the month of May, 2007, has opined that the Labour Court has the power and authority to decide the reference and the disputes like the one in question.

14. It is, thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

15. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 1 AND 2

16. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

17. The petitioner Shri Parveen Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the bank has framed its service rules and he was removed from service as per Rule 29 of such rules. He also admitted that in the month of October, 2004 certain restrictions were imposed on the bank by the Reserve Bank of India because of which its functioning came to a halt. He feigned ignorance about the fact that the bank suffered losses of crores of rupees. He admitted that an inquiry was conducted against all the employees of the bank. He denied that his salary was reduced by the Board of Administrators only after the inquiry. He does not know that vide resolution No.1, dated 21.4.2006, the salary of all the employees of the bank was fixed at the initial scale(s). He is not aware of the fact that a meeting of the general house had taken place on 17.3.2006 in which the budget of the bank was not approved and it was noticed that maximum amount is being spent on the salary of the employees. He has no knowledge that the bank was computerized in the year 2007. He does not know that his services were disengaged by the bank in public interest being surplus.

18. Conversely, Shri Harvilas Behl, Assistant Manager, The Mandi Urban Co-operative Bank Ltd., Mandi, testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that the Administrators of the bank were appointed by the Registrar of the Co-operative Societies. The salary of the petitioner was reduced w.e.f. 01.10.2005. Approval qua reduction of salary was done in the general house meeting which took

place in the month of March, 2006. No notice under Section 9A of the Act was served upon the petitioner regarding change of his service conditions. Before the termination of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. After the disengagement of the services of the petitioner, the bank needed a clerk and a computer operator, who were employed. Shri Hemant Kapoor was appointed as a computer clerk since he was senior amongst the employees whose services were terminated. He does not know that Smt. Madhu Malhotra and Shri Hemant Kapoor joined the service on a single day and the former is elder or younger in age to Shri Hemant Kapoor. When the services of the petitioner were disengaged, Shri Sunil Kumar was serving as a peon in the bank. Shri Sunil Kumar (Peon) has been promoted as a clerk. Before employing new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. He denied that he has given a phoney statement.

19. Ex. PW1/B is the copy of an office order. It depicts that vide resolution No.3, dated 22.9.2005, the Board of Administrators of the respondent/bank decided to fix the monthly salary of the bank employees at the basic pay without any allowances w.e.f. 01.10.2005 considering the weak and poor financial health of the bank as well as its increasing losses in order to curtail the establishment cost. The name of the petitioner figures in this office order.

20. Ex. PW1/C is the copy of the retrenchment order/notice dated 30.6.2006 served upon the petitioner and seven other employees by the Board of Administrators of the bank. It unfolds that the Board of Administrators resolved per resolution No.8, dated 27.6.2006, to terminate the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution. A cheque was given to the petitioner as three months salary in lieu of the notice period. It was also mentioned that the petitioner shall be entitled to the other monetary benefits as per the service rules.

21. Ex. R1 is the copy of the service rules for the employees of the Mandi Urban Co-operative Bank Ltd., Mandi, Himachal Pradesh.

22. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide:

- (i) Whether reducing the salary of the petitioner to the initial basic pay w.e.f. 01.10.2005 is violative of Section 9A of the Act or not? and
- (ii) Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is legal and valid or not?

23. At this stage, I will like to highlight that there are certain unmarked/un-exhibited documents on the record. A few documents were produced by the parties at the time of the arguments. They have been appended to the file of reference No.201 of 2010 (Shri Parveen Kumar Vaidya vs. The Administrator). These documents go to show that the monthly emoluments of the employees of the bank (including the petitioner) were fixed at their current respective basic pay(s) without any allowances w.e.f. 01.10.2005 vide resolution No.3, dated 22.9.2005, passed by the Board of Administrators as a measure of punishment. Office order Ex. PW1/B was issued only after the passing of the resolution dated 22.9.2005. All the documents are being looked into and considered by me for the just and proper decision of the case particularly when the petitioner (PW1) in his cross-examination admitted that an inquiry was conducted against all the bank employees.



24. Here I will also like to mention that the petitioner has concealed the material facts from the Court that he was charge-sheeted for his misconduct, an inquiry was conducted against him in which he took part, reasonable opportunity of being heard was afforded to him and the charges framed against him for causing huge losses to the bank directly/indirectly stood proved, where after, the Board of Administrators exercising the powers contained in Rule 21(4) of the service rules (Ex. R1) imposed the penalty to down grade the petitioner to the lower scale (initial scale) with immediate effect. Against the penalty imposed by the Board of Administrators, the petitioner had preferred an appeal as per Rule 22 of the rules *ibid* before the appellate authority (Registrar of the Co-operative Societies). The said appeal was partly allowed by the appellate authority. De-novo inquiry on the charges already framed against the bank employees was ordered by the appellate authority. The petitioner did not participate in the de-novo inquiry. The findings of the earlier Inquiry Officer and the punishment awarded to him vide resolution No.3, dated 22.9.2005, were not disturbed by the officer, who carried out the de-novo inquiry, and the Board of Administrators of the bank as is evident from the proceedings dated 22.9.2009.

25. In para 3 of the statement of claim/demand, the petitioner has pleaded that he is/was governed in respect of his service conditions by the service rules (Ex. R1) as framed by the respondent/bank. As already mentioned, the penalty of reduction in pay was imposed upon the petitioner after he was found guilty of the misconduct and causing huge losses to the bank. It is not the case of the petitioner that fair inquiry was not conducted against him. No allegation of victimization or violation of the principles of natural justice has been put forth by the petitioner against the respondent. Since the salary of the petitioner was reduced as a measure of punishment after due inquiry in which he participated, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his service conditions were changed by the respondent in contravention of the provisions contained in Section 9A of the Act. The petitioner cannot canvass that there is a violation of Section 9A of the Act by his opponent. 26. Now, I proceed to decide the other limb of controversy between the parties i.e. as to whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is illegal and invalid or not?

27. There is no denial of the fact that the respondent bank has framed its service rules. They stand duly approved by the Board of Directors of the bank and the Registrar of Co-operative Societies, Himachal Pradesh. Rule 29 reads thus:-

“Retirement and retrenchment: In case of retrenchment or pre-mature retirement every employee shall be given three month’s notice before his retrenchment or premature retirement or three month’s salary in lieu thereof with benefit of Provident Fund on such salary. Such employee will also be entitle to salary and allowances for the period of earned leave at his credit”.

28. Admittedly, the services of the petitioner were retrenched by the respondent under the above noted rule per notice dated 30.6.2006, the copy of which is Ex. PW1/C. The retrenchment notice (Ex. PW1/C) reveals that the Board of Administrators of the bank had resolved vide resolution No.8, dated 27.6.2006, to disengage the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution (surplus-age). In the notice of retrenchment, it was mentioned that the retrenchee shall be entitled to the monetary benefits as per para/Rule 29 of the service rules of the bank. A cheque was also forwarded to the petitioner on account of three months salary in lieu of the notice period. It is not the case of the petitioner/claimant that the notice of retrenchment was not received by him or the cheque has not been got encashed upto now. Further, it is not the version of the respondent that the provisions of Chapter VB of the Act are/were applicable to the bank and the services of the petitioner were retrenched in consonance with Section 25-N of the Act.

29. In para 5 of the statement of claim/demand, the petitioner has categorically pleaded that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.7.2006. This fact has not been denied specifically by the respondent in the corresponding para of the reply. Moreover, the petitioner (PW1) stated in the examination-in-chief that he had completed 240 days of service in a block of 12 calendar months anterior to the date of his retrenchment. This fact has not been challenged by the respondent at the time of the cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side.

30. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

31. There is not even an iota of evidence on the record to show that the petitioner/workman was paid the compensation at the time of his retrenchment as envisaged under Section 25-F (b) of the Act. For this reason, the final termination of the services of the petitioner by the respondent with effect from 01.7.2006 is patently wrong and illegal.

32. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as per Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature.

In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to

protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

33. There is another reason for which the termination of the services of the petitioner by the respondent is illegal. In para 6 of the reply, the respondent has pleaded that two computer trained persons were employed in the bank on contract basis. The names of these two persons have not been disclosed by the respondent-bank. From the questions posed during the cross-examination to the petitioner (PW1) by the ld. counsel for the respondent, it can be gathered that the respondent bank was computerized somewhere in the year 2007 i.e. after the termination of the services of the petitioner. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by his adversary in terms of Section 25-H of the Act. The respondent failed to adhere to the provisions of this Section.

34. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

35. Such being the situation, I have no hesitation to conclude that the respondent has not flouted the provisions of Section 9A of the Act. The reduction in salary of the petitioner w.e.f. 01.10.2005 is legal and justified. However, the termination of the services of the petitioner by the respondent is bad in the eyes of law.

36. These issues are decided accordingly.

#### *RELIEF*

(ISSUE NO. 4)

37. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner regarding reduction of his salary in a wrongful manner being meritless fails. The same is hereby dismissed. However, the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 1st July, 2006 except back wages. It is clarified that the services of the petitioner will be reengaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of his termination to the date of reinstatement. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref No. 53 of 2009.  
Instituted on. 10.8.2009.  
Decided on 6.10.2012.

Prem Singh S/o Shri Kalam Singh R/o VPO Kungalbalti, Tehsil Nankhari, District Shimla,  
H.P. *..Petitioner..*

*Vs.*

The Divisional Manager, Forest Corporation, Rampur Division, District Shimla, H.P.  
*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Dalip Kaith, Advocate.  
For respondent : Shri Balram Sharma, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

“Whether the action of employer i.e Divisional Manager, Forest Corporation, Rampur Division, District Shimla, H.P to terminate the services of Shri Prem Singh S/o Shri Kalam Singh on being absent from duty vide orders dated 4.6.2005 without any notice and compensation is proper and justified? If not, what relief of service benefits including seniority and compensation the above aggrieved worker is entitled to? ”

2. The petitioner has filed the claim stating that he was working as field-man on daily wages with the respondent since June, 1992 and continued to work till 3.6.2005. On 4.6.2005, his services were illegally terminated vide order no. 43/2005. The termination of petitioner was against the mandatory provisions of Industrial Disputes Act, 1947. No opportunity of being heard was given to him as before his termination no notice was served upon him. Hence, the claim petition was filed with the prayer to set aside the termination order and to reinstate him with all consequential service benefits.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to suppression of material facts by the petitioner, maintainability, locus standi of petition and estoppel were raised. On merits, the respondent admitted that the petitioner was engaged on daily

wages in June, 1992 as field-man-cum-Chowkidar. He was terminated on 4.6.2005 because he was found absent from his duties which led to theft of timber in the night on 8.5.2005. The notice dated 20.5.2005 was served upon the petitioner to explain his position within ten days but the petitioner failed to file any reply. Consequently, an enquiry was conducted wherein he was found guilty as the result, his services were terminated. Accordingly, respondent prayed for the dismissal of the claim petition.

4. Petitioner did not file any rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the services of petitioner vide order dated 4.6.2005 were terminated by the D.M Forest Corporation, Rampur Division, District Shimla, H.P in an illegal and unjustified manner without notice and compensation as alleged? *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to and from whom? *OPP.*
3. Whether the claim of the petitioner is not maintainable? *OPR.*
4. Whether the claim of the petitioner is bad for non-joinder and mis-joinder of necessary parties? *OPR.*
5. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

- |             |  |
|-------------|--|
| Issue No. 1 | Yes.   |
| Issue No. 2 | Entitled to reinstatement in service with seniority and continuity but without back wages.                                   |
| Issue No. 3 | No.  |
| Issue No. 4 | No.  |
| Relief.     | Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award. |

#### REASONS FOR FINDING

Issue No. 1.

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of the petitioner on 4.6.2005 were illegally terminated by the respondent without giving him any opportunity of being heard. The termination of petitioner is against the principles of natural justice and not sustainable under law.

9. It is not disputed fact that the petitioner was working as daily wages employee under the respondent since June, 1992. It is also not disputed that his services were terminated on 4.6.2005 vide termination order Ex. RW-1/E. Petitioner Prem Singh stepped into the witness box as

Pw-1 and deposed that he was not at fault for the theft of timber on 8.5.2005 because on that day he was on election duty at Rampur whereas at Narkanda where the theft was committed, Shri Man Bahadur and Beer Singh were on duty. He also deposed that he was not given any opportunity of being heard and he denied that any notice was served upon him.

10. On behalf of respondent Shri Ashok Negi, Divisional Manager, Forest Corporation Rampur appeared in the witness box as RW-1 and deposed that the petitioner was found absent from duty on 8.5.2005 at Dhomri Forest Depot. And his absence led to the theft of timber. He further deposed that earlier also the petitioner was in the habit of remaining absent without any information and an enquiry was held wherein the petitioner was found guilty. He also deposed that notice dated 20.5.2005 was served upon the petitioner to explain his position within ten days. He tendered in evidence the information regarding the absence of petitioner Ex. RW-1/B, copy of notice dated 20.5.2005 Ex. RW-1/C, the receipt of notice Ex. RW-1/D and copy of termination order Ex. RW-1/E.

11. From the aforesaid evidence, it is clear that the respondent has alleged that on 8.5.2005 when the theft was committed, the petitioner was found absent from his duties. No attendance register was produced in evidence by the respondent to show that in fact on 8.5.2005, the petitioner Prem Singh was deputed at the Forest Corporation Depot. Dhomri from where the theft took place. Here, the cross-examination of RW-1 Shri Ashok Negi is relevant as in his cross-examination he has stated that on 8.5.2005 at Dhomri Depot as per record Shri Bir Singh and Man Bahadur were on duty. He has not stated that petitioner Prem Singh was also on duty at Dhomri Depot on 8.5.2005. Then, I failed to understand how petitioner could be liable for the theft from Dhomri Depot, on 8.5.2005.

12. So, in the light of aforesaid testimony of RW-1 Shri Ashok Negi, the petitioner cannot be held liable. Consequently, the show cause notice dated 20.5.2005 Ex. RW-1/E has got no legal consequences as it has been mentioned in the notice that the absence of petitioner from duty on 8.5.2005 led to the theft in question.

13. Moreover, RW-1 Shri Ashok Negi also tendered in evidence the copy of enquiry report Ex. RW-1/F wherein petitioner Prem Singh was held guilty. This enquiry report is dated 11.5.2005 but the show cause notice Ex. RW-1/C was dated 20.5.2005. That means notice Ex. RW-1/C was issued after the enquiry report Ex. RW-1/F. It established that prior to the enquiry no show cause notice was issued to the petitioner. This fact goes to establish that the petitioner was not at all associated during the enquiry. Therefore, certainly, the petitioner has been condemned unheard as there is violation of principles of natural justice. On this ground also, the enquiry report Ex. RW-1/F is not sustainable under law and on the basis of same, the petitioner could not be terminated from service.

14. Hence, in the light of my aforesaid discussion, I find sufficient evidence on record to suggest that petitioner was not on duty on 8.5.2005 at Forest Depot. Dhomri from where the theft was committed. So, petitioner could not be held liable for the said theft. Further, it is also proved on record that no opportunity of being heard was given to the petitioner as he was not associated during enquiry. Therefore, the termination order of petitioner dated 4.6.2005 is not sustainable under law and liable to be set aside.

15. Accordingly, for the aforesaid reasons, this issue is answered in favour of the petitioner.

Issue No. 2

16. For the reasons to be recorded hereinabove while discussing issues no.1, the termination orders of the petitioner dated 4.6.2005 issue by respondent are hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions along-with seniority and continuity. However, keeping in view the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No. 3

17. From the careful perusal of the record, there is nothing to suggest that the petition is not maintainable. Hence, this issue is decided against the respondent.

Issue No. 4

18. The services of petitioner were terminated by Divisional Manager Forest Corporation, Rampur and petitioner has challenged his termination order and petition has also been filed against Divisional Manager Forest Corporation, Rampur. The record is revealing that earlier the petition was filed against Divisional Forest Officer, Rampur but subsequently, the petition was amended and the name of respondent was corrected as Divisional Manager Forest Corporation, Rampur, District Shimla. Therefore, I do not find that petition is bad for non-joinder and mis-joinder of necessary parties. Consequently, this issue is also decided against the respondent.

*RELIEF*

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the action of the employer i.e Divisional Manager Forest Corporation, Rampur to terminate the services of the petitioner is improper and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of October, 2012 in the presence of parties counsel.

By order,  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 340/2012

Date of Institution : 17.9.2012

Date of Decision : 03.08.2013

Shri Raj Kumar s/o Shri Hari Dass, r/o Village Zim-Zima, P.O. Dul, Tehsil Joginder Nagar,  
District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Shri Raj Kumar S/O Shri Hari Dass, R/O Village Zim-Zima, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during January, 2000 to 31-08-2007 by the Executive Engineer, H.P.P.W.D Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis in the month of January, 2000. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 31.08.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from January, 2000 to 31.08.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2007 and 10 years of continuous service on 31.12.2009. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2010 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). As such, as



is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from January, 2000 to 31.08.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2010 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of January, 2000. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent’s) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya’s case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed.
5. Per order dated 21.03.2013, following issues were framed:
  1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time (as per the reference) is illegal and unjustified as alleged? *OPR.*
  2. Whether the petition is not maintainable in the present form? *OPR.*
  3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? *OPR.*
  4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *OPR.*
  5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Raj Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of non-availability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. Hecorroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief Engineers

and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

12. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2<sup>nd</sup> January, 2004 (forenoon).

13. Ex. RW1/C is the mandays chart relating to the petitioner.

14. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 06.1.2000 by the respondent.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his engagement to August 31, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

19. Not pressed.

## ISSUE NO.3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of

which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 4

23. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

24. This issue too is decided in favour of the petitioner and against the respondent.

#### *RELIEF*

#### (ISSUE NO. 5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31st August, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 140/2011

Date of Institution : 28.11.2011

Date of Decision : 03.08.2013

Shri Rajesh Kumar s/o Shri Thakur Singh, r/o Village Khalanu, P.O. Panjalag, Tehsil Ladbhrol, District Mandi, H.P. *..Petitioner.*

*Versus*

The Additional Superintending Engineer, HPSEB Electrical Division Joginder Nagar, District Mandi, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in service of Sh. Rajesh Kumar S/O Sh. Thakur Singh, Village-Khalanu, P.O. Panjalag, Tehsil Ladbhrol, Distt. Mandi (H.P.) by The Additional Superintending Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, H.P. from time to time, w.e.f. 21.9.1999 to 20.7.2000 and finally w.e.f. 21.7.2000, without compliance of provisions contained in Section 25-F, G & H of the ibid Act, as abandonments of services has not been established, is legal & justified, if not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent w.e.f. 21.9.1999. He worked in Electrical Sub Division, Lad Bharol. No appointment order/letter was issued in his name by the respondent. He worked as such up-to 20.7.2000. During the period of his employment, the respondent used to give him the fictional breaks so that he does not complete 240 days of continuous service as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). Suddenly, his services were finally terminated by the Assistant Engineer as per the directions of the respondent vide written order No.373 dated 22.6.2000 w.e.f. 21.7.2000. At the time of the termination of his services the persons junior to him namely Shri Gian Chand and Shri Tara Chand etc. were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after his disengagement new/fresh hands have been employed by the respondent. The names of the newly appointed persons are S/Shri Lekh Ram and Sanjay Kumar etc. He (petitioner) was not given an opportunity of re-employment. The services of Shri Lekh Ram etc. have also been regularized by the respondent on different dates in the regular pay scale. In the termination letter/notice dated 22.6.2000, it was mentioned that his (petitioner's) services will be re-engaged as per the availability of the material on the basis of the seniority. He approached the respondent time and again to re-employ him, but in vain. From the reliable sources, he has come to know that in the year 2007, new/fresh hands have been once again engaged by the respondent. A demand notice dated 22.9.2007 was then served upon the respondent by him, but in vain. During the break period and after the final termination, he is/was not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court may kindly be set aside the illegal breaks period of applicant and directed to respondent to condone the breaks period of applicant in his continuity of service for all purposes.
- (ii) The Hon’ble Court again may kindly be set aside the illegal termination order dated 22.06.2000 w.e.f. 21.07.2000 and directed to respondent to reinstate the services of petitioner with full back wages, in continuity of service, seniority with all other consequential service benefits.
- (iii) The Hon’ble Court further may kindly be directed to respondent to regularize the services of petitioner as per the policy of State Government”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim.

Preliminary objections have been taken to the effect that the claim petition is misconceived. The petitioner has no cause of action and locus standi to sue. The claimant/petitioner did not work continuously for 240 days in a calendar year. The claim petition is not maintainable. The petitioner joined the service on 21.9.1999 and left the same on 20.7.2000. He worked for only 135 days. The services of the petitioner were engaged for specific works. He was appointed on casual basis from time to time. His services were disengaged per notices dated 31.1.2000 and 22.6.2000. Since the employment of the petitioner was purely on casual basis, he has no locus standi to prefer the claim petition. The Standing Orders of the HPSEB (Himachal Pradesh State Electricity Board) are no more in force. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged on 21.9.1999. He worked intermittently for total 135 days up-to 20.7.2000. The petitioner was employed for doing the specific works on casual basis from time to time. No person junior to the petitioner has been retained in service or engaged/re-engaged. No new/fresh hands have been appointed. The petitioner never approached him (respondent) for re-engagement. He (petitioner) is gainfully employed. The petition is baseless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 05.9.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time w.e.f. 21.9.1999 to 20.7.2000 is illegal and unjustified as alleged? *OPP.*
2. Whether the services of the petitioner have been wrongly and illegally terminated by the respondent w.e.f. 21.7.2000 as alleged? *OPP.*
3. Whether the petitioner has locus standi to sue? *OPP.*
4. Whether the petitioner has a cause of action? *OPP.*
5. Whether the petition is not maintainable in the present form? *OPR.*
6. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? *OPR.*
7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Rajesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he served the respondent in two spells from 21.9.1999 to 20.7.2000. He also admitted that the termination notices Ex. R1 and Ex. R2 were given to him by the respondent. Further, he admitted that his services were disengaged by the respondent because of the completion of the work and his services were engaged by the respondent for carrying out the work of temporary nature. He had the knowledge that his services will come to an end automatically on the completion of the work. He denied that no person junior to him is serving the respondent/Board. Nowadays he earns his livelihood by doing the work of agriculture.

10. The respondent viz. The Additional Superintending Engineer, HPSEB Electrical Division, Joginder Nagar did not appear as a witness. Instead, one Shri Ranjeet S. Thakur, Assistant Engineer, HPSEB, Lad Bharol testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that after the petitioner left the job, no notice was given to him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He feigned ignorance about the fact that the persons junior to the petitioner are still serving the respondent. He denied that the services of the petitioner were disengaged in a wrongful manner.

11. Ex. PW1/B is the copy of the demand notice dated 22.9.2007 served upon the respondent by the petitioner under Section 2-A of the Act.

12. Ex. PW1/C is the copy of the judgment dated 4th May, 2011 pronounced by our Hon'ble High Court in Civil Writ Petition No.3323/2010 titled as Rajesh Kumar versus State of Himachal Pradesh and others.

13. Ex. PW1/D is the seniority list of daily waged beldars as it stood on 30.9.2007 in respect of the office of the respondent.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 21.9.1999 and he worked as such intermittently up-to 20.7.2000. The said fact finds support from the mandays chart Ex. RW1/B which is not in dispute.

16. The petitioner (PW1) in his cross-examination admitted that he served the respondent in two spells. He also admitted that his services were engaged by the respondent for carrying out the works of temporary nature and the same were to come to an end on the completion of the said works. Admittedly, termination notices the copies of which are Ex. R1 and R2 were served upon the petitioner by the Assistant Engineer, Electrical Sub Division HPSEB, Lad Bharol. In view of the admissions made by the petitioner, it cannot be said that artificial/fictional breaks were provided to him by his employer during the course of the employment from 21.9.1999 to 20.7.2000.

17. Now comes the question as to whether the final termination of the services of the petitioner by the respondent w.e.f. 21.7.2000 is legal and valid or not?



18. The version of the petitioner is that his services were unlawfully terminated by the respondent. While denying the said fact, the respondent has maintained that the petitioner left the job on 20.7.2000 of his own accord and free volition.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. As already mentioned, the respondent has not appeared as a witness in this case. For this reason, an adverse inference under Section 114 (g) of the Indian Evidence Act has to be drawn against him. It has come in the statement of RW1 that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left/abandoned the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

20. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 21.7.2k as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. The seniority list Ex. PW1/D of daily waged beldars as it stood on 30.9.2007 in respect of Electrical Division, Joginder Nagar clarifies that at the time of the termination of the services of the petitioner, the persons junior to him were retained in service by the respondent. The latter failed to adhere to the principle of 'last come first go'. Not only this, after the termination of the services of the petitioner new/fresh hands were engaged by the respondent. Shri Sanjay Kumar (serial No.74) was appointed in the year 2002, whereas, Shri Bhag Singh (serial No.76) was employed in the year 2003. There is nothing on the file to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not to complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

22. These issues are decided accordingly.

#### ISSUES NO. 3 AND 4

23. Taking into account my findings on the issues No.1 and 2 above, it is held that the petitioner has a cause of action. He has the locus standi to sue.

24. These issues are decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 5

25. Not pressed.

#### ISSUE NO. 6

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by

the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

27. While testifying in the Court as PW1, the petitioner has given his age as 31 years. During the cross-examination, the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

28. This issue is also decided in favour of the petitioner and against the respondent.

#### *RELIEF*

(ISSUE NO. 7)

29. As a sequel to my findings on the various issues above, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 21.7.2000 except back wages. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 274/2012

Date of Institution : 06.07.2012

Date of Decision : 20.08.2013

Shri Rajesh Kumar s/o Shri Roshan Lal, r/o Village Sapri Anoh, P.O. Dhameta, Tehsil Fatehpur, District Kangra, H.P. ..Petitioner.

*Versus*

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Rajesh Kumar S/O Shri Roshan Lal, R/O Village Sapri Anoh, P.O. Dhameta, Tehsil Fatehpur, District Kangra, H.P. from time to time during February, 2005 to June, 2008 and finally terminated w.e.f. 01-07-2008 by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on 01.4.2004 by the respondent in the Wild Life, Forest Range/Beat Dhameta. He continuously worked as such up-to 30th June, 2008. On the next day i.e. 1st July, 2008, the Incharge of the Beat/Range stopped issuing the muster roll in his (petitioner's) favour and terminated his services as per the directions of the respondent. The Incharge conveyed to him (petitioner) that as and when the work and funds are available his services will be reengaged. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. Even no reason was assigned for the disengagement of his services by a verbal order which amounts to unfair labour practice. He (petitioner) used to discharge his duties as a watch and ward staff in Dhameta Wild Life Range. He used to take care of the migratory birds (guests) visiting Pong Dam (Lake). He also did the plantation work in Karu area. During the period of his employment, the respondent gave him the artificial/fictional breaks from time to time despite the objections. At the time of the termination of his services, the persons junior to him namely Smt. Raksha Devi and Smt. Rajkumari etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Not only this, after his retrenchment, new/fresh hands have been engaged by the respondent. The names of the newly appointed persons are S/Sh. Shashi Pal and Pawan Kumar etc. His name has not been incorporated in the seniority list maintained by the respondent. He has been discriminated. From the date of his

disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the intentional breaks in service given to him by the respondent from time to time during the month of February, 2005 to June, 2008 as well as the final termination of his services w.e.f. 01.7.2008 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. She filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The reference regarding final termination of the services of the petitioner with effect from 01.7.2008 and the claim petition are premature. The same have also become in fruituous. The petitioner worked with her (respondent) up-to the month of February, 2012. His mandays chart is annexure R1.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager on 1st April, 2004. However, it has been pleaded that the petitioner was initially appointed in the month of February, 2005 for anti-poaching & watch and ward activities in Pong Dam Bird Sanctuary, Dhameta Beat District Kangra. His services were engaged for protection of the migratory birds. The work of anti-poaching is of seasonal nature. It generally spans between the months of November to March. The petitioner was employed for anti-poaching activities every year w.e.f. February, 2005 as and when the migratory birds like Bar headed geese, Ruddy Shell duck, Pintail, Common Coots, Common teal, Common Pochard and Tufted duck etc. visit Pong Dam sanctuary area for their annual sojourn from Siberia. At the time of the engagement of the services of the petitioner, he was duly apprised about the availability of above noted seasonal works which is evident from the muster rolls and bills issued in his (petitioner's) name. The petitioner has worked in continuity with the opening of the season beyond 01.7.2008. As such, the reference regarding final termination of his services on 1st July, 2008 is premature and has become in fruituous. The engagement of the petitioner was on account of the seasonal work as per his free will and consent. Thus, there is no question of giving any fictional breaks in service to him. The petitioner was provided the work as and when he reported for duty as per the availability of the work. Shri Shesh Pal is senior to the petitioner. The other workmen, whose names have been disclosed by the petitioner were also engaged for seasonal work of anti-poaching activities in the relevant year(s). Some of the workmen have already left the job. In the year 2009, the petitioner got himself enrolled under MNREGA scheme in Gram Panchayat, Hadwal. Smt. Raksha Devi was engaged as a part time worker in the month of April, 1991. She was made a daily wager as per Government policy dated 30th July, 2004. Smt. Raj Kumari is not working in her (respondent's) office. Smt. Usha Devi is serving in Gopalpur Zoo, Tehsil Gopalpur, District Kangra w.e.f. September, 2006. She (Usha) has sworn an affidavit that she will not claim any seniority for the regularization of her services. Shri Sunil Kumar was appointed on compassionate grounds after the death of his father Shri Ram Rattan as per the memo dated 15.1.2009 issued by the Conservator of Forests, Wild Life Circle (North), Dharamshala. No person junior to the petitioner is working under her (respondent). After the completion of the seasonal work the petitioner used to do the agricultural work to earn his livelihood. Presently, he is gainfully employed in a hotel. The name of the petitioner figures in the seniority list. She (respondent) did not indulge in any unfair labour

practice. The principle of 'last come first go' was duly followed. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he never absented from his duties. His services used to be engaged and disengaged by his opponent. When the industrial dispute was raised by him before the Labour Officer, Dharamshala, the respondent re-engaged his services in the month of November, 2010. Despite re-engagement, the respondent continued providing him the artificial/fictional breaks. The persons junior to him were given the work in continuity by the respondent. Now he has been reemployed by the respondent on 1st December, 2012. It stands admitted that in the month of February, 2009, a job card under MNREGA scheme was issued in his favour by the Gram Panchayat. He worked for 81 days under the said scheme. No application was moved by him (petitioner) before the Gram Panchayat for providing him the work. Being a poor man, the Gram Panchayat provided temporary employment to him under MNREGA. He is not working in any hotel.

5. Vide order dated 15.01.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during February, 2005 to June, 2008 is/was illegal and unjustified as alleged? *OPP.*
2. Whether the final termination of the services of the petitioner by the respondent w.e.f. 01-07-2008 is illegal and unjustified as alleged? *OPP.*
3. Whether the petition is not maintainable in the present form? *OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? *OPR.*
5. Whether the claim petition is premature as alleged. If so, its effect? *OPR.*
6. Relief.

6. At this stage, I will like to highlight that during the course of the arguments, the Id. Authorized Representative for the claimant/petitioner fairly conceded at bar that after 1st July, 2008 the services of his client have been re-engaged by the respondent because of which the issue regarding final termination of the services of the petitioner by the respondent w.e.f. 01.7.2008 has become in fructuous. In the rejoinder, the petitioner has admitted that he has been re-employed. Therefore, in the subsequent part of this Award, I will confine my discussions and findings only regarding the nature of engagement of the services of the petitioner as well as the fact as to whether artificial/fictional breaks in service were provided to the petitioner by the respondent or not? Needless to say that giving intentional breaks in service to an employee amounts to unfair labour practice on the part of the employer as per the Vth schedule of the Act.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No  
Issue No. 2 : In fructuous  
Issue No. 3 : Yes  
Issue No. 4 : No  
Issue No. 5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

#### ISSUES NO. 1 AND 3

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. The petitioner Shri Rajesh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that even now he is serving under the respondent/department in Dhameta Wild Life Range, Pong Dam Reservoir and wet land fall within the jurisdiction of the above named Range. He admitted that during the winter season from November to March, birds from the foreign countries visit Pong Dam. He also admitted that during those days, Wild Life department is in need of the anti-poaching as well as watch and ward staff to prevent the hunting of the migratory birds. Further, he admitted that his services used to be engaged during the season only for anti-poaching as well as ward and watch purposes. Self stated, he used to do the work of plantation as well. He denied that he had joined the service for the first time in the year 2005 and at the time of his engagement it was told to him by the respondent that he has been employed for seasonal work of anti-poaching as well as watch and ward. He admitted that as and when he received the payment from the respondent, he did not raise any objection regarding issuance of the wrong muster rolls in his name. He cannot produce any record to show that he was paid the salary by the respondent earlier to the month of February, 2005. He denied that no artificial breaks in service were given to him by his adversary and he was only a seasonal worker. He does not know that Shri Shesh Pal is/was senior to him. He feigned ignorance about the fact that the other workmen, whose names have been disclosed by him, are/were also the seasonal workers. He denied that Smt. Raj Kumari is not serving under the respondent. Smt. Usha Devi is working in Gopalpur Zoo which is approximately 100 kilometers away from his place of posting. He admitted that no anti-poaching activity is undertaken in the Zoo. Volunteered, the work is carried out for all the 12 months in the nursery. He is not aware of the fact that Shri Sunil Kumar was appointed on compassionate grounds after the expiry of his father. He admitted that he works privately and in MNREGA. He denied that to derive undue advantages, he has instituted a phoney petition.

11. Conversely, Smt. Sangeeta Chandel, Divisional Forest Officer (Wildlife), Hamirpur (respondent) testified as RW1. In her affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by her.

In the cross-examination, she admitted that as per the seniority list, 30 persons are junior to the petitioner. She denied that all the juniors are working continuously. Self stated, some of the employees are doing the seasonal work and some have been engaged as per the orders of the Court. She denied that intentional breaks were provided to the petitioner from the year 2005 to 2008.

12. Ex.PW1/B is the mandays chart/seniority list of daily wagers (month-wise in each calendar year) from the year 1999 to 31.7.2010 in respect of Wild Life Division, Hamirpur. It corresponds to Ex. RW1/L. The name of the petitioner figures at serial No.8 of the list.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Exts. RW1/C1 to C6 and C8 to C14 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and others from time to time. They depict that the services of the petitioner were engaged for anti-poaching in Pong Dam, watch and ward purposes and fire protection in Pong Dam area of Dhameta Beat.

15. Exts. RW1/C7 and D1 to D9 are the copies of the bills against which the payment was made to the petitioner by the respondent from time to time. They too unfold that the services of the petitioner were engaged for the above noted purposes.

16. Ex. RW1/E is the mandays chart pertaining to Sh. Shesh Pal s/o Shri Bishan Dass. It reveals that Shri Shesh Pal was appointed by the respondent in the month of July, 2004 (earlier to the petitioner). He used to perform the duties of maintenance of the nursery and plantation etc.

17. Ex. RW1/F is the copy of the order dated November 12, 2009 pronounced by our Hon'ble High Court in CWP (T) No. 14582/2008 titled as Shri Shesh Pal versus The State of Himachal Pradesh through its Principal Secretary (Forest) to the Government of Himachal Pradesh, Shimla and others.

18. Ex. RW1/G is the mandays chart qua the labourers namely S/Sh. Nanak Chand, Pawan Kumar and Sanjeev Kumar. It clarifies that these three workmen were engaged from time to time for anti-poaching and as fire watchers.

19. Ex. RW1/H is the copy of a certificate issued by the Pradhan, Gram Panchayat, Hadwal, Tehsil Fatehpur, District Kangra. It goes to show that the petitioner worked under MNREGA scheme from 03.2.2009 to 30.11.2009.

20. Ex. RW1/I is the copy of a letter dated 30th July, 2004 issued by the Principal Chief Conservator of Forests, Himachal Pradesh. It deals with the engagement of part time workers on daily wage basis. The names of the petitioner and his companions do not figure in this letter.

21. Ex. RW1/J is the copy of an affidavit executed by Smt. Usha Devi w/o Shri Ashok Kumar who is working as a daily waged sweeper/worker in Gopalpur Zoo. In the affidavit, the deponent has mentioned that she will not claim any seniority for regularization of her services or go to the Court for regularization.

22. Ex. RW1/K is the copy of a letter dated 15.1.2009 written by the Conservator of Forests, Wild Life Circle (North), Dharamshala. It unfolds that Shri Sunil Kumar was appointed as a daily wager on compassionate grounds after his father Shri Ram Rattan left the land of the dying.

23. The petitioner has not placed/exhibited on the record any document evidencing that his services were engaged by the respondent on 1st April, 2004 as claimed. The mandays chart Ex. RW1/B coupled with the other documents placed on the record by the respondent go to show that the services of the petitioner were initially engaged by the respondent in the month of February, 2005 only. There is no cogent and convincing evidence on the file to show that the mandays chart or the other documents produced by the respondent are incorrect.

24. While taking me through the evidence available on the file, the Id. Authorized Representative for the petitioner/claimant argued that artificial/fictional breaks in service were provided to his client by the respondent/department wrongly and illegally. The break period is to be counted as continuous service for the purpose of Section 25-B of the Act.

On the other hand, the Id. DDA for the respondent urged that the petitioner was a seasonal worker. His services used to be engaged as per the requirement and work. Consequent to the closure of the season, the petitioner used to cease to work. The cessation of work will not amount to retrenchment as per Section 2 (oo) (bb) of the Act. Therefore, it cannot be said that the respondent indulged in any unfair labour practice or intentional breaks in service were provided to the petitioner.

25. To my mind, the contention of the Id. DDA holds the force and is sustainable. As already mentioned, the petitioner has not produced any document to show that his services were initially engaged by the respondent on April 1, 2004. Rather, the mandays chart Ex. RW1/B etc. depict that the petitioner was initially appointed by the respondent in the month of February, 2005.

26. The petitioner (PW1) in his cross-examination admitted that his services were engaged in Dhameta Wild Life Range of the Forest Department. Pong Dam Reservoir and wet land fall within the jurisdiction of the said Range. He admitted that during the winter season from November to March, the migratory birds from abroad visit Pong Dam as guests. Further, he admitted that during those days, Wild Life department is in need of the anti-poaching as well as watch and ward staff to prevent the hunting. He (PW1) even admitted that his services used to be engaged by the respondent during the season for the above noted purposes. Of course, he hastened to voluntarily add that he used to do the plantation work as well. The assertion of the petitioner that he was also engaged in the plantation activity seems to be totally false and baseless in view of the documents available on the record. Exts. RW1/C1 to C6 and C8 to C14 viz. the copies of the muster rolls as well as Exts. RW/1/C7 and D1 to D9 i.e. the copies of the bills make it abundantly clear that the petitioner was employed by the respondent from time to time for anti-poaching activity, fire protection in Pong Dam area & watch and ward purposes only. At no point of time, the services of the petitioner were engaged for doing the plantation work in any nursery. The petitioner (PW1) in his crossexamination admitted that as and when he received the payment from the respondent, he did not raise any objection regarding issuance of the wrong muster rolls in his name. The act and conduct of the petitioner amply demonstrate that his services are being engaged from the date of his initial appointment for the seasonal activities only during the winter season as and when the migratory birds visit Pong Dam Sanctuary. In para 2 of the claim petition, the petitioner has admitted that he used to take care of the migratory birds visiting Pong Dam (Lake).

27. If artificial/fictional breaks in service were given to the petitioner by the respondent time and again then, why he (petitioner) did not raise any objection at the time of the issuance of the muster rolls and bills in his favour or at the time of receipt of the payment? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. From the mandays chart Ex. RW1/B, it can be gathered that from the date of his initial appointment up-to February, 2012, the petitioner did not complete 240 days of work in any calendar year of his engagement.

28. In *Morinda Co-op Sugar Mills Ltd. vs. Ram Kishan and Ors etc.*, AIR 1996 SC 332, it has been held that the disengagement of the services of a seasonal worker on the cessation of the work will not amount to retrenchment as per clause (bb) of Section 2(oo) of the Act. 29. Such being the situation, I have not hesitation to conclude that fictional breaks in service were never provided to the petitioner by the respondent. The claim petition is not maintainable. The petitioner is not entitled to any relief.

30. These issues are decided against the petitioner and in favour of the respondent.



## ISSUE NO. 4

31. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

32. This issue is decided in favour of the petitioner and against his opponents.

## ISSUE NO. 5

33. Not pressed.

*RELIEF*

## (ISSUE NO. 6)

34. Taking into consideration my findings on the issues No.1 and 3 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COUR-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 20/2011

Date of Institution : 31.03.2011

Date of Decision : 19.08.2013

Shri Rajesh Rana s/o Shri Tot Ram, r/o Village & P.O. Vashisht, Tehsil Manali, Distt. Kullu, H.P. ..Petitioner.

Versus

1. Sh. John Sims, Managing Director, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P.

2. Sh. Ajay Dabra, Director, Corporate Affairs, Himalayan Ski Village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P. ..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Kamal Kishore, Adv.  
: Miss Rajni Chauhan, Adv.

For the Respondent(s) : Sh. Jitender Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Rajesh Rana S/O Sh. Tot Ram, Field Assistant by the management of Himalayan Ski village Private Ltd. Regd. Office 'SOHAM' Village Shuru, Manali, Distt. Kullu, H.P. we.f. 16.12.2009 without serving charge sheet, without conducting enquiry and without following the mandatory provisions of the Industrial Disputes Act, 1947, inspite of retainership letter dated-nil, issued by the management, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from above management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that an interview was conducted by the respondents in which he participated. He was selected, where-after, the appointment letter dated 1st June, 2007 was issued in his favour by the respondents. He joined the service. As per clause 10 of the appointment letter, on completion of the probation period of six months, his services were regularized by the company/respondents vide confirmation letter dated 1st December, 2007. His (petitioner's) commitment for the company was appreciated. He continuously worked with the respondents up-to December, 2009 as Field Assistant (Mountain Sports Division), Manali, District Kullu. He completed 240 days of work in each and every calendar year of his employment. During the service tenure, his work and conduct was excellent. Neither any explanation was called for nor any show cause notice/warning letter etc. was issued to him. On 16th December, 2009, his services were terminated by the respondents wrongly and illegally by adopting the principle of hire and fire. Before the termination of his services, neither he was charge-sheeted nor an inquiry was conducted against him. He was not given an opportunity of being heard. No notice was given to him before the termination of his services. Wages in lieu of the

notice period and the retrenchment compensation were also not paid to him. Not only this, the respondents did not obtain necessary prior approval from the appropriate Government to retrench his services. On December 16, 2009, he (petitioner) was forcibly and arbitrarily refused the entry in the premises of the registered office of the company. The entry was blocked to discontinue his services in violation of the terms and conditions of the appointment letter dated 1st June, 2007. He was not paid the salary or stipend for the regular employment. He was kept idle for the unexplained reasons. For the last six months, the respondents have not paid any salary to him. He kept on visiting the office of the respondents time and again for re-employment and payment of his dues, but in vain. The respondents have violated the terms of the contract. From the date of his disengagement, he (petitioner) is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The respondents indulged in unfair labour practice. He is struggling hard to maintain himself and his dependants. A demand notice under Section 2-A of the Act was served upon the respondents by him, but of no avail.

As such, he (petitioner) prays that the verbal retrenchment order dated 16.12.2009 passed by the respondents be upset. The latter be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. The respondent No. 2 filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable as the project Himalayan Ski Village proposed to be started at Manali was not allowed to start by the Government of Himachal Pradesh. The project is standstill. The claim of the petitioner is not sustainable in the eyes of law in view of the acceptance of letter No.HSV/KV/Retainer/018 by him. He (petitioner) has suppressed the material facts from the Court and has not come to the Court with clean hands. The petitioner has no locus standi to sue. He has no cause of action. The petition is bad in the eyes of law.

On merits, it has been owned that the services of the petitioner were engaged vide letter dated 1st June, 2007. He was initially appointed with probation of six months. The petitioner did not work up-to 16th December, 2009 as claimed. Actually, the petitioner was not in the employment of the company after 31.5.2009. In May 2009, he was offered the retainer-ship per letter No.HSV/KV/Retainer/018. The retainer-ship was accepted by the petitioner and other workmen. Now the petitioner cannot change his stance. On accepting the retainer-ship, the petitioner never attended the office after 31.5.2009. He cannot take advantage of his own lapse. After accepting the retainer-ship, the petitioner left the company of his own. He did not complete 240 days of work in any calendar year of his engagement as claimed. The services of the petitioner were never terminated in the manner as alleged by him. Due to the circumstances beyond their control, they (respondents) were forced not to start the project by the Government of Himachal Pradesh. The company was served a show cause notice for cancellation of the project by the Himachal Pradesh Government. It (company) had to approach the Hon'ble High Court of Himachal Pradesh against the show cause notice. The Hon'ble High Court passed an interim order against the cancellation of the project which continues till date. In the best interest of the petitioner and others, all the employees were given six months retainer-ship which started w.e.f. 01.6.2009. The letters qua the retainer-ship were accepted by all the employees (including the petitioner). It has been denied that a demand notice was issued by the petitioner. The management was forced to close the project due to negative approach of the Himachal Pradesh Government. Ultimately, the termination of the services of the petitioner was done and took place due to the circumstances created by the Government of Himachal Pradesh. The management had only handful employees. There was no need to get approval of the appropriate Government for the disengagement of their services. The provisions of Section 25-N of the Act are not attracted in this case. The petitioner was never refused entry into the office as claimed. He in-fact never visited the office after 31.5.2009. Since

there was no work due to the forced closure of the project, the company was left with no option, but to disengage the services of the workmen. After offering the retainer-ship to the petitioner and other workmen for six months starting from 01.6.2009, the position remained the same. The company was left with no option except not to give any further retainer-ship to any of the employee. The petitioner was duly informed about the condition/circumstances prevailing in the company. Due to the dead lock with the Government, they (respondents) were forced to close the operation of the project. The petitioner is still persisting for the continuous work knowing well that no work at all is available with them (respondents). No provision of the Act has been infringed. The alleged disengagement of the services of the petitioner cannot be termed as retrenchment. The petition is meritless. The petitioner is not entitled to any relief. The project stands closed.

In these circumstances, the answering respondent No.2 prays that the petition in hand be dismissed.

4. The reply submitted by the respondent No.2 has been adopted by the other respondent viz. respondent No.1.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that he ever accepted and signed the retainer-ship agreement. He never left the company of his own. He cannot be held responsible for the closure of the project. The respondents cannot shun their responsibilities by resorting to the unfair means. Alleged closing down of the project is a matter between the respondents and the Himachal Pradesh Government. The retainer-ship letter is denied for want of knowledge.

6. Per order dated 07.8.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 is illegal and unjustified as alleged? *OPP.*
2. Whether the petitioner has a cause of action? *OPP.*
3. Whether the petitioner has locus-standi to sue? *OPP.*
4. Whether the petition is not maintainable in the present form? *OPR.*
5. Whether the petitioner has not come to the Court with clean hands. If so, its effect? *OPR.*
6. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? *OPR.*
7. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Yes

Issue No.5 : Yes

Issue No.6 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

9. Shri Rajesh Rana (petitioner) stepped into the witness box as PW2. In his affidavit Ex. PW2/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that the work of the project is totally closed from the month of February, 2008 onwards. He feigned ignorance about the fact that despite the closure of the project the respondents gave him the pay up-to the month of May, 2009 without doing any work. He denied that when the situation did not improve, the respondents kept him as a retainer for six months vide retainer-ship letter Ex. R3. Such letter does not bear his signatures. He denied that after June 2009, he is working somewhere else. He also denied that out of the greed and to gain the employment in a wrongful manner, he has instituted a phoney petition.

10. Shri Amarjeet (PW3) who is the petitioner in a similar reference bearing No.22/2011, supported the cause of the petitioner. Ex. PW3/A is the affidavit filed by him in terms of Order 18 Rule 4 CPC.

In the cross-examination, he admitted that presently no field assistant is working with the respondents. He also admitted that the project is lying closed from the month of February, 2008 onwards. He denied that to help his companion, he has given a wrong statement.

11. Shri Amar Nath Dhiman (PW1) is Labour Inspector, Kullu. He brought the requisitioned record and deposed that a demand notice was issued by the petitioner. Copy of the demand notice was received in his (PW1's) office. He called the parties and tried to get the dispute resolved amicably. Mandays chart Ex. PW1/A was produced by the respondents during the conciliation proceedings.

In the cross-examination, he stated that the copies of various letters viz. Exs. R1 to R3 were also produced by the respondents at the time of the conciliation. He admitted that in all 15 workmen had raised the industrial dispute. 11 workmen withdrew their cases. The project is lying closed.

12. Conversely, Shri Ajay Dabra (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongly.

13. Ex. PW2/B is the copy of the appointment letter dated 1st June, 2007 issued in favour of the petitioner by the respondents. It bears the signatures of Shri Ajay Dabra (respondent No.2).

14. Ex. PW2/C is the copy of the letter dated 01.12.2007 written to the petitioner by the respondents. It reveals that on successful completion of the probation period as per appointment letter dated 01.6.2007, the services of the petitioner were confirmed w.e.f. 01.12.2007.

15. Ex. PW2/D is the copy of the demand notice dated 17<sup>th</sup> December, 2009 served upon the respondents by the petitioner under Section 2-A of the Act.

16. Ex. R1 is the copy of a letter dated 01.12.2009 written by all the 15 Field Assistants (including the petitioner) to the respondent No.2. In this letter, it was mentioned that the retainer-ship period of six months has come to an end on 30.11.2009. All the 15 Field Assistants are present today i.e. on 01.12.2009. The company should inform them as to what is the status of their employment from 01.12.2009 onwards. They be also intimated as to what is the status of their retainer-ship for the last six months and when the retainer-ship amount will be paid to them.

17. Ex. R2 is another letter dated 08.12.2009 written by all the Field Assistants to the respondent No.2 in continuation of the letter dated 01.12.2009 (Ex. R1). In Ex. R2, it was mentioned that the queries raised by them per letter Ex. R1 have not been replied. They (workmen) are approaching the Labour Court for the redressal of their grievances.

18. Ex. R3 is the copy of letter No.HSV/KV/Retainer/018 written to the petitioner by the respondent No.1. It clarifies that because of the closure of the project, the company expressed its inability to keep the employees. The petitioner was offered retainer-ship from 1st June, 2009 onwards for a period of six months. It is/was mentioned in the letter that at the end of the six months period, the company shall review the situation and decide if this retainer-ship can be continued or not. The retainer amount of the petitioner was fixed as Rs.2,000/- per month beginning June 1, 2009. This letter of retainer-ship bears the signatures of the petitioner as a token of its acceptance.

19. Ex. R4 is the no dues/clearance certificate which was produced by the petitioner on 15.6.2009 before the respondents. In this certificate, a mention has been made that the individual is on retainer-ship.

20. Ex. R5 is the copy of the letter dated 15.12.2009 written by the respondent No.1 to the petitioner. Vide this letter, the petitioner was informed that his retainer-ship cannot be renewed further as no work is available. In the letter, it was also highlighted that the payment of last six months retainer-ship fee will be the last payment until HSV (Himalayan Ski Village) is allowed to proceed by the State of Himachal Pradesh.

21. Ex. R6 is the copy of the postal receipt. It evidences that the letter Ex. R5 was sent to the petitioner under registered cover.

22. Exts. R7 to R17 are the copies of the deeds of settlement dated 24th day of March, 2011 which were entered into between the 11 Field Assistants namely S/Sh. Singhi Ram and Kewal Ram etc. as well as the respondents.

23. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. Thus, as per the reference/notification issued by the appropriate Government, this Court is required to decide as to whether the verbal termination of the services of the petitioner by the respondents w.e.f. 16.12.2009 in spite of the issuance of the retainer-ship letter by the management (respondents) is legal and justified or not?

24. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondents in contravention of the provisions of Section 9-A of the Act.

25. It is often said and rightly too that the men may tell lies, but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight.

26. It is the admitted case of the parties that the services of the petitioner were engaged as a Field Assistant. Appointment letter dated 1<sup>st</sup> June, 2007 (Ex. PW2/B) was issued in his favour. It is also an admitted fact that on the completion of the probation period of six months, the services of the petitioner were confirmed by the respondents per letter dated 1<sup>st</sup> December, 2007 (Ex. PW2/C).

27. From the evidence available on the record, it can be gathered that some dispute arose between the respondents/company and the Government of Himachal Pradesh because of which the work of the project (Himalayan Ski Village) came to a standstill somewhere in the beginning of the year 2008. Due to this reason, the company was not in a position to retain all the workmen. Despite the non availability of the work the petitioner remained on the rolls of the respondents up-to 31.5.2009 and was paid the wages/salary as per the appointment letter Ex. PW2/B. From 1st June, 2009, the petitioner was kept as a retainer on payment of the retainer- ship fee of Rs.2000/- every month per letter Ex. R3. The retainership period was of six months beginning 01.6.2009. As already mentioned Ex. R3 bears the signatures of the petitioner. It is well known that a person signing a document is presumed to agree to its contents. True it is that the petitioner has denied his signatures on Ex. R3. It appears to me that false stand has been taken by the petitioner with an ulterior motive taking into account the other evidence available on the file.

28. As mentioned earlier, clearance/no dues certificate dated 15.6.2009, the copy of which is Ex. R4, was submitted by the petitioner. It too, bears his signatures. In this certificate, it has been clearly mentioned that the individual is on retainer-ship. Not only this, Exts. R1 and R2 make it clear that the petitioner was duly aware of the fact that his period of retainer- ship came to an end on 30th November, 2009 on the completion of six months.

29. At the cost of reiteration, I will like to add that the retainership of the petitioner was not further renewed by the respondents after it came to an end on 30.11.2009. The petitioner was duly informed regarding the said fact vide letter dated 15.12.2009, the copy of which is Ex.R5. Admittedly, 15 Field Assistants (including the petitioner) employed by the respondents had raised the industrial dispute. Out of them, 11 Field Assistants compromised the matter vide settlement deeds Exs. R7 to R17. Only the matters relating to the petitioner and three other Field Assistants are before this Court.

30. Employing a person as retainer for six months on payment of the fixed emoluments per mensem cannot be termed as a regular employment. The same is in-fact contractual employment. The retainership/contractual employment of the petitioner beginning June 1, 2009 came to an end on 30th November, 2009. Non renewal of the agreement of retainer-ship or the contract of employment does not fall within the mischief of the term 'retrenchment' as per clause (bb) of Section 2(oo) of the Act.

31. That being so, it cannot be said that the termination of the services of the petitioner by the respondents is illegal and unjustified.

32. This issue is decided against the petitioner and in favour of his opponents.

## ISSUES NO. 2 TO 4

33. Taking into account my findings on issue No.1 above, it is held that the petitioner has no cause of action. He has no locus standi to sue. The claim petition is not maintainable in the present form.

34. These issues are also decided against the petitioner.

## ISSUES NO. 5 AND 6

35. Keeping in view my discussions and findings on issue No.1, it can be safely said that the petitioner has suppressed the material facts from the Court. He has not approached the Court with clean hands. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

36. These issues too are decided against the petitioner and in favour of his adversaries.

*RELIEF*

## (ISSUE NO.7)

37. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 133/2012  
Date of Institution : 19.1.2012  
Date of Decision : 01.08.2013

Shri Rajmal s/o Shri Tawaroo Ram, r/o Village Majhwar, P.O. Jalpehar, Tehsil Joginder  
Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*



The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Rajmal S/O Sh. Tawaroo Ram, Village Majhwar, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1999 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.03.1999. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.03.1999 to 31.12.2001, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.01.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis.

The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 26.03.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work-charge status to the applicant after completion of 10 years i.e. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of workcharges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.3.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 and 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya’s case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya’s case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner

completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2000 is illegal and unjustified as alleged? *OPP.*
2. Whether the petition is not maintainable in the present form? *OPR.*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *OPR.*
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR.*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Rajmal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-20 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 06.3.1999. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on

account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(iii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(iv) he has been on leave with full wages, earned in the previous years;

(v) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(vi) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be

deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.3.1999. From that date to 31.12.2001, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 and 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

## ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

## ISSUE NO. 3

27. Not pressed

## ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

*RELIEF*

## (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 302/2012

Date of Institution : 02.08.2012

Date of Decision : 29.08.2013

Shri Sandeep Mankotia s/o Shri Piara Singh Mankotia, r/o Village and Post Office  
Panjaware, Tehsil and District Una, H.P. ..Petitioner.

*Versus*

The Principal, D.A.V. Senior Secondary Public School, Ambota, Tehsil Amb, District Una,  
H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Miss Seema Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services as Driver of Shri Sandeep Mankotia S/O Shri Piara Singh Mankotia, R/O Village and Post Office Panjaware, Tehsil and District Una, H.P. by the Principal, D.A.V. Senior Secondary Public School, Ambota, Tehsil Amb, District Una, H.P. w.e.f. 09-07-2011 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that the respondent/school/institution is working under the control of D.A.V. Managing Committee, Chitragupt Road, New Delhi. Several educational institutions are run by the D.A.V. Managing Committee all over the country. The Managing Committee has its Standing Orders/Service Bye-Laws which are applicable to all the institutions working under it including the respondent/institution. The respondent/school is functioning since the year 1985. Teaching and non teaching staff is working in Ambota school from the year 1985 till date. The respondent/institution has nine school buses. The same are used to pick up and drop the students. Transportation charges are collected by the school from the students by taking into account the distance covered in the bus for coming to and going away from the school. More than ten drivers and ten conductors have been engaged by the respondent for plying the buses. The Motor Transport Vehicle Act is applicable to the respondent/school. An advertisement was issued in the news paper by the respondent for the post of the driver. An interview was conducted on 02.5.2010 at 9.30 A.M. in the school premises by the respondent in which he (petitioner) participated. He was selected by the interview committee for the post of the driver and verbally directed to report for duty before 06.5.2010. He joined as a driver with the respondent on 03.5.2010. No appointment letter was issued in his name by the respondent/institution. He continuously worked as a driver up-to 08.7.2011. The school remained closed from 09.7.2011 to 14.8.2011 due to the summer vacations. In the institution/school, the



teaching and non teaching staff have their union/association namely Himachal Pradesh Private School Avem Karamchari Sangh. The head office of the sangh is located at Palampur, District Kangra. The union is affiliated to State Bhartiya Mazdoor Sangh. A demand notice dated 1st June, 2010 was served upon the respondent by the union. Different types of demands have been raised by the union and the matter is pending decision before this Court. He (petitioner) is an active member of the union. During pendency of the general demand notice dated 01.6.2010 served by the union, his (petitioner's) services have been terminated by the respondent without the prior permission of this Court/Tribunal in violation of Section 33-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). On 14.8.2011, when the school opened after the summer vacations, he (petitioner) reported for duty. He was not allowed to work by the respondent. The latter remarked that his services are no more required by the institution and the same have already been terminated w.e.f. 09.7.2011. His services have been disengaged due to the activities of the union. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted for the misconduct, if any. During the entire service tenure, his work and conduct was satisfactory. No complaint was received against him by the respondent/management. Before the disengagement of his services, one month pay in lieu of the notice period and the retrenchment compensation as envisaged under Section 25-F of the Act were not paid to him. No inquiry was conducted against him. He worked continuously from 03.5.2010 to 08.7.2011 and completed more than 240 days of work in a block of 12 calendar months preceding the date of his retrenchment. The services of two other drivers namely S/Sh. Vijay Kumar and Kewal Singh were also terminated by the respondent/management alongwith him (petitioner). The respondent violated the principles of natural justice and bye-laws of the institution. After his termination, the respondent inserted an advertisement dated 01.8.2011 in the daily newspaper (Punjab Kesari) for appointing the driver(s) on contract basis. This clearly shows that his services were malafidely disengaged by the respondent/management to deprive him from continuity in service. The act and conduct of the management amounts to unfair labour practice as per Clause 10 of the Vth schedule appended to the Act. He has been victimized due to the union activities only. After his termination, Shri Pardeep Kumar r/o Village Ambota and Shri Sandeep Kumar r/o Village Chalet were appointed as drivers in his place w.e.f. 16.8.2011. Before engaging new/fresh hands, an opportunity of re-employment was not afforded to him as per Section 25-H of the Act. In the service bye-laws of the respondent/institution, the service conditions of the employees have been specified. There is no provision in the service byelaws to appoint an employee on daily wage, consolidated or contract basis. All the appointments have been specified on regular basis in the regular pay scale as granted by the management to its employees. The pay and benefits of the Central Govt. employees are being given by the management to the employees of the D.A.V. institutions. He (petitioner) is entitled to the pay scale of a driver instead of the minimum wages from 03.5.2010 to 14.8.2011. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Act.

As such, he (petitioner) prays that the termination order dated 09.7.2011 passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the full back wages etc.

3. On notice, the respondent appeared. She filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has suppressed the true and material facts from the Court because of which he is not entitled to any relief. The petition is bad for non-joinder of a necessary party. This Court/Tribunal has no jurisdiction to entertain and decide the claim petition.

On merits, the below given facts stand admitted.

(a) D.A.V. Managing Committee is running the educational institutions all over India.

- (b) The Managing Committee has framed its Standing Orders/Service Bye-Laws which are applicable to all the institutions working under it (including the respondent).
- (c) D.A.V. Senior Secondary Public School, Ambota, is functioning from the year 1985 onwards.
- (d) The school plies the buses for picking up and dropping the students on payment of the transportation charges.
- (e) More than 10 drivers and 10 conductors have been engaged for running the buses.
- (f) The petitioner was appointed on temporary basis.
- (g) An advertisement was issued in the newspaper for the post of the driver.
- (h) An interview was conducted on 02.5.2010 in the school premises.
- (i) The petitioner participated in the interview and was selected by the interview committee for the post of driver.
- (j) The claimant/petitioner was verbally directed to report for duties before 06.5.2010.
- (k) The petitioner joined the duty on 03.5.2010 and worked as a driver up-to 08.7.2011.
- (l) No appointment letter was issued in favour of the petitioner; and
- (m) The school remained closed from 09.7.2011 to 14.8.2011 due to the summer recess.

However, it has been pleaded that the petitioner was appointed purely on temporary basis as a driver on 06.5.2010 for 66 days. After 66 days, he was relieved on 10.7.2010. The relieving order was duly signed by the petitioner. A recruitment notice dated 10.8.2010 was issued by the institution (respondent). Such notice was circulated by pasting it on the notice board of the school. Per notice dated 10.8.2010, an interview for the post of driver on temporary basis for the period 13.8.2010 to 31.3.2011 was fixed. The petitioner appeared in the interview. After following the due process of selection, the petitioner was recruited against the temporary post of driver for a period of 231 days. He was relieved on 31.3.2011. The relieving order bears the signatures of the petitioner. After that, the petitioner moved an application for the post of the driver which was purely on contractual basis. Due process of recruitment was followed. The services of the petitioner were engaged for 98 days from 02.4.2011 to 08.7.2011. Appointment letter was issued in the name of the petitioner. He accepted the terms and conditions of the appointment after duly understanding them. The petitioner was employed purely on contract basis from 02.4.2011 to 08.7.2011. The school was then closed owing to the summer vacations. On 01.8.2011, she (respondent) got published an advertisement in the daily newspaper (Punjab Kesari) for the posts of drivers on contract basis. An interview as per the advertisement dated 01.8.2011 was held on 04.8.2011. The petitioner intentionally and willingly did not apply for the post of the driver for the reasons best known to him. On 14.8.2011, the petitioner was never told that his services are no more required by the institution. He (petitioner) was never removed from service as alleged. The appointment of the petitioner was contractual for a fixed/specific period. It automatically came to an end on the completion of the contract period/last working day of the contract. The services of the petitioner stand disengaged in consonance with the bye-laws of the institution. Neither the petitioner has been victimized nor any provision of the Act has been flouted. The fact that the services of S/Sh. Pardeep Kumar and Sandeep Kumar were engaged w.e.f. 16.8.2011 in place of the petitioner has

not been specifically denied. The claim petition is false, frivolous and vexatious. The same is not maintainable. The petitioner did not complete 240 days of work as claimed. He is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that no appointment letter was given to him. At the time of the engagement of his services, no terms and conditions of service were settled. No relieving order was ever given to him. The drivers and conductors, who were working with him, were paid the salary and other benefits during the summer vacations. He was deliberately not allowed to join his duties after the summer recess. The advertisement dated 01.8.2011 issued by the respondent and the interview held on 04.8.2011 are/were not to his knowledge.

5. Per order dated 02.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 09.07.2011 is illegal and unjustified as alleged? *OPR.*
2. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? *OPR.*
3. Whether the petition is bad for non-joinder of the necessary party? *OPR.*
4. Whether this Court/Tribunal has no jurisdiction to entertain and decide the matter as alleged? *OPR.*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed.

Issue No.4 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Sandeep Mankotia stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had joined the service in Ambota School on 06.5.2010. He admitted that on 28.4.2010, the respondent had issued an advertisement in the newspaper to the effect that the posts of drivers and conductors are lying vacant. The willing

candidates can apply and take part in the interview. He admitted that pursuant to the said advertisement, he had applied for the post of the driver and joined the service on 06.5.2010. He denied that he was relieved from his duties on 10/7/2010 before the school closed in the month of July, 2010 for summer vacations. Ex. R1 i.e. copy of the relieving order bears his signatures. He denied that he signed Ex. R1 after reading it and admitting its contents to be correct. He even denied that on 10.8.2010, an interview notice, the copy of which is Ex. R2, was displayed on the notice board of the school by the respondent for employing the drivers and conductors on contract basis after the interview. He refuted that on 10.8.2010 after the interview, he was selected by the interview committee and his services were re-engaged on 13.8.2010. He admitted that he was relieved from his duties on 31.3.2011 and the relieving order Ex. R3 has been signed by him. Further, he admitted that the appointment letter, the copy of which is Ex. R4, was issued in his name by the respondent. He admitted that after he was relieved from his duties on 31.3.2011, the school issued another advertisement for employing the drivers and conductors on contract basis. He controverted that he participated in the interview and was selected. He denied that the joining report dated 02.4.2011, the copy of which is Ex. R5, bears his signatures. He admitted that he was then relieved by the school authorities on 8th July, 2011. He even admitted that on 01.8.2011, the respondent/institution had issued an advertisement regarding the fact that the posts of drivers and conductors are lying vacant which are to be filled on contract basis. He feigned ignorance about the fact that the copy of the advertisement dated 1st August, 2011 is Ex. R6. He admitted that the interviews were fixed in the school premises on 04.8.2011 at 11.00 A.M. in which he did not take part. He denied that he remained a contractual employee of the school from time to time. He also denied that before he joined the service, the terms and conditions of appointment were explained to him by the respondent/institution and he joined the duties only after admitting the same to be correct. Further, he denied that to gain the employment and other benefits in a wrongful manner, he has instituted a phoney petition. He denied that that he is working with the Mankotia Bus as a driver.

9. Conversely, Smt. Rashmi Raj Biswal, Principal of the school (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by her.

In the cross-examination, she denied that on 09.7.2011, the services of the petitioner were disengaged in an unlawful manner. Self stated, the term of contractual appointment had come to an end. The benefit of summer vacations is not given to the non teaching staff of the school. Volunteered, school buses do not ply during such vacations as the children do not come to the school. She denied that the posts of drivers and conductors are permanent as well as the petitioner had worked for more than 240 days. She admitted that in the month of August, 2011, S/Sh. Sandeep Kumar and Pardeep Kumar were appointed as drivers. She stated of her own that an advertisement for conducting the interviews for the posts of drivers was issued in which the petitioner did not participate. She denied that if a person is selected for a particular post after the interview, he is not required to undergo the process of interview once again. Self stated, for the engagement of the contractual employees, the interviews are held time and again. She denied that the services of the petitioner were engaged up-to 31.3.2012 per appointment letter Ex. R4 and by doing the cutting in the said letter, it was mentioned that the services of the petitioner have been engaged only up-to 08.7.2011. Volunteered, the teaching staff is employed up-to 31st March i.e. the end of the session, whereas, the non teaching staff is engaged as per the requirement and the availability of the work. She admitted that an accident case is pending against S/Sh. Sandeep Kumar and Pardeep Kumar. The mishap resulted after their appointment. She denied that the services of the petitioner have been disengaged unlawfully.

10. Ex. RW1/B is the mandays chart/working days details relating to the petitioner.

11. Ex. RW1/C is the seniority list of the drivers and cleaners-cumconductors.
12. Ex. RW1/D is the copy of the proceedings of the meeting held on 5th December, 2001 by the D.A.V. College Managing Committee to consider the norms for placement in next higher scales of drivers working in D.A.V. Public/Model Schools.
13. Ex. RW1/E is the copy of Minutes of LMC meeting of the respondent/school held on 27.4.2010. The LMC (Local Management Committee) unanimously resolved and recommended to appoint fresh transport staff i.e. drivers and conductors from April, 2010 upto the date of beginning of monsoon break every year on trial basis. It was also decided by the LMC that if the work of the drivers and conductors is found satisfactory, their appointment may be extended from mid of August (on reopening of the school after monsoon break) till 31st March, 2010.
14. Ex. RW1/F is the flowchart depicting pay band and grade pay for various posts under 6th Pay Commission.
15. Ex. RW1/G is the statement of account issued by State Bank of India, SME Gagret Branch, Tehsil Amb, relating to the petitioner.
16. Ex. PA is the copy of the service rules/bye-laws of the D.A.V. institutions.
17. The petitioner has not placed/exhibited on the record any document evidencing that his services were initially engaged on temporary basis by the respondent w.e.f. 03.5.2010 and he worked as such up-to 08.7.2011. As PW1, the petitioner stated that he joined the service on 06.5.2010 in the school (though in the statement of claim/demand the date of appointment is mentioned as 03.5.2010). The mandays chart Ex. RW1/B produced by the respondent has not been disputed by the petitioner. It shows that the services of the petitioner were initially engaged by the respondent in the month of May, 2010 and he worked up-to July, 2011. In July 2011, the petitioner worked for 08 days only.
18. It is often said and rightly too that the men may tell lies, but the documents do not. It is the basic law that the documentary evidence as compared to the oral evidence has to be given weight.
19. From the evidence available on the record, it can be gathered that the petitioner worked as a driver with the respondent on contractual basis from time to time. The respondent used to get published advertisement(s) in the newspapers for holding an interview for appointing the drivers and conductors on contract basis. The petitioner used to participate in the interview. After the selection, he used to join his duties and on the completion of the contract period, he (petitioner) was relieved from his duties by the respondent time and again.
20. The petitioner (PW1) in his cross-examination admitted that he was relieved from his duties by the respondent on 8th July, 2011. He also admitted that the appointment letter Ex. R4 was issued in his favour by the respondent. Of course, he denied that the joining report dated 2nd April, 2011 (Ex. R5) which was submitted by him after the issuance of the appointment letter Ex. R4, bears his signatures.
21. Ex. R4 goes to show that the services of the petitioner were engaged as a driver on contract basis from 2nd April, 2011 to 8th July, 2011 on payment of the consolidated salary of Rs.5,171/- per month. As already mentioned, it is the admitted case of the petitioner that he was relieved from his duties by the respondent on 8th July, 2011 i.e. the day on which the term of the contractual appointment came to an end. Even if in the appointment letter Ex. R4, it has been

printed that the appointment of the petitioner shall be up-to 31st March, 2012, the same will not come to his rescue as it has been specifically mentioned in the appointment letter that the term of the appointment of the petitioner is from 2nd April, 2011 to 8th July, 2011 only. The respondent (RW1) has categorically stated that the services of the teaching staff are engaged till the end of the session i.e. 31<sup>st</sup> March. The school buses do not run during the summer vacations as the children do not come to the school. The non-teaching staff is employed as per the requirement and the availability of the work. As the buses do not ply during the monsoon break, the question of engaging the services of the petitioner/driver by the respondent from 2nd April, 2011 to 31.3.2012 does not arise.

22. From the evidence available on the file, it becomes clear that the respondent/school used to issue the advertisement(s) in the newspapers from time to time for employing the drivers on contract basis. Walk-in-interview used to be held in which the petitioner used to participate. It is an admitted fact that after the petitioner was relieved of his duties on 08.7.2011, an advertisement dated 1st August, 2011 was got published in the daily newspaper (Punjab Kesari) by the respondent for appointing the drivers on contract basis. Ex. R6 is the copy of the said advertisement. Walk-in-interview was scheduled for 4th August, 2011 at 11.00 A.M. in the school premises for the post of driver. The petitioner did not participate in the interview because of which he was not selected. S/Sh. Sandeep Kumar and Pardeep Kumar took part in the interview. They were selected and appointed as drivers by the respondent on contractual basis in the month of August, 2011. Since the petitioner failed to participate in the selection process, I fail to understand as to how it lies in his mouth to say that his services have been wrongly and illegally terminated by the respondent.

23. The petitioner admits that the appointment letter Ex. R4 was delivered to him by the respondent. The contention of the petitioner that the joining report dated 2nd April, 2011 (Ex. R5) has not been signed by him appears to be false since the joining report was submitted by the petitioner in the school on 02.4.2011 itself after the issuance of the appointment letter Ex.R4 in his name. So far as the rules/bye-laws Ex. PA relating to the employees of D.A.V. Managing Committee are concerned, the same relate to only the regular employees. The evidence adduced by the parties makes it abundantly clear that the petitioner was only a contractual employee/driver who served the respondent/school in different spells from May, 2010 to 8th July, 2011 on payment of the consolidated salary per mensem. The term of contractual employment of the petitioner as per the appointment letter Ex. R4 had come to an end on 8th July, 2011. After that, the petitioner did not participate in the interview for the post of driver on contract basis which took place on 4th August, 2011. Non renewal of the term of the contractual employment does not come within the mischief of the word 'retrenchment' as per clause (bb) of Section 2 (oo) of the Act.

24. That being so, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally dispensed with by the respondent. The latter has not flouted any provision of the Act.

25. To be fair to the Id. authorized representative and the counsel for the petitioner, now I proceed to discuss the rulings cited by them.

- (i) Paramjit Singh vs. Director, Public Instructions & Ors., 2011 LLR 116 (SC). This case relates to the termination of a probationer on account of unsatisfactory performance.
- (ii) G. Venkat Rao vs. Depot Manager, A.P.S.R.T.C., Visakhapatnam Depot, Visakhapatnam and Anr., 2009 LLR 152 (AP). This case pertains to the termination of a bus driver who was given contractual appointment, without holding an inquiry against him for the alleged misconduct.

- (iii) M/s. National Aluminium Co. Ltd. vs. Deepak Kumar Panda & Ors., 2002 LLR 928 (SC). This case pertains to a contractual employee whose contractual appointment was not extended as he failed to produce reliable proof of having requisite qualification, whereas, the persons junior to him were absorbed in service on regular basis. There is nothing to show that any person junior to the petitioner (Shri Kewal Singh) has been absorbed in regular service by the respondent/institution.

26. The observations made in the above quoted rulings in no way benefit the petitioner. It seems that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. This issue is decided against the petitioner and in favour of his adversary.

#### ISSUE NO. 2

28. Taking into account my findings on issue No.1 above, it can be safely said that the petitioner has suppressed the true and material facts from the Court. For this reason too, he is required to be shown the doors of the Court.

29. This issue is also decided against the petitioner.

#### ISSUES NO. 3 AND 4

30. Not pressed.

#### *RELIEF*

#### (ISSUE NO. 5)

31. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 196/2010

Date of Institution : 30.06.2010

Date of Decision : 03.08.2013

Shri Sanjay Thakur s/o Shri Muni Lal, r/o Village Bagain, P.O. Maloh, Tehsil Sunder  
Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

1. The Secretary, Distt. Red Cross Society, Zonal Hospital Complex, Mandi, H.P.
2. The Chairman, Distt. Red Cross Society, Zonal Hospital Complex, Mandi, H.P.
3. The General Manager, N.T.P.C. Ltd. Kol Dam Hydro Electric Project, VPO Barmana,  
Distt. Bilaspur, H.P. ..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondents No. 1 and 2 : Sh. Laxman Thakur, Adv.

For the Respondent No. 3 : Sh. Abhishek Lakhanpal, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sanjay Thakur S/O Sh. Muni Lal, Pharmacist by the Chairman/Secretary, District Red Cross Society, Mandi, Zonal Hospital Complex, Mandi, H.P. w.e.f. 28.3.2008 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, to what back wages, service benefits and relief Sh. Sanjay Thakur S/O Sh. Muni Lal is entitled to from above named employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he had appeared in an interview on 23.7.2002 before the respondents No. 1 and 2 for the post of a Pharmacist. He was duly selected and appointed as a Pharmacist by the respondent No.2 viz. Chairman (DC), District Red Cross Society, Mandi vide order dated 29.8.2002. His services were engaged on contractual basis for 180 days only on payment of the fixed amount of Rs.2500/- per month. On completion of 180 days of service, the contract of employment was not renewed by the respondents. He (petitioner) continued to work up-to 27.3.2008. Vide order/letter dated 08.9.2002, he was deputed as a Pharmacist by the respondent No.1 (Secretary, District Red Cross Society, Mandi) in the office of the Chief Manager (HR), National Thermal Power Corporation Ltd., Kol Dam Hydro Power Project, Barmana, District Bilaspur. He (petitioner) worked in the office of the Chief Manager up-to his last date of engagement i.e. 27.3.2008. He completed more than 240 days of work in each and every calendar year of his employment. During the service period his work and conduct was satisfactory. To his surprise a letter dated January 12, 2008 was addressed to the respondent No.2 by the Senior Manager (HR) of the respondent No.3 to discontinue his



(petitioner's) services. On the basis of the said letter the respondent No.2 terminated his services vide office order No.5758 dated 27.3.2008. The respondent No. 3 started the hospital at Jamthal in which a new/fresh person has been appointed as a Pharmacist in his (petitioner's) place. He was not given an opportunity of employment. The respondent No.3 has/had no right to give instructions to the respondent No.2 to discontinue his services. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. No inquiry was conducted against him for the misconduct, if any. One month salary in lieu of the notice period and the retrenchment compensation were not paid to him. A demand notice dated 30.6.2008 was served upon the respondents by him, but in vain. From the date of his disengagement, he is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order dated 27.3.2008 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondents No.1 and 2 in their joint reply have taken the preliminary objections to the effect that the claim petition is not maintainable. The services of the petitioner were not retrenched by them (replying respondents) because of which he has no cause of action. The petitioner is still serving the respondent No.3 through M/s. Utility Powertech Limited at NTPC, Koldam Barmana, District Bilaspur. The petitioner is estopped from filing the claim petition by his act and conduct. He has not come to the Court with clean hands and has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were initially engaged by them (respondents No.1 and 2). The petitioner was offered employment for a specific period of 180 days on contract basis. He entered into an agreement on 02.9.2002. As per the terms of the agreement the services of the petitioner could be terminated at any time by them (answering respondents) without assigning any reasons and without serving the prior notice. It was also stipulated that if the agreement is not renewed further, the services of the petitioner will be deemed to be terminated from the date of expiry of the agreement/contract. Red Cross Society, Mandi is the District Branch of the Indian Red Cross Society. The latter is a voluntary International organization providing the relief in times of disaster/emergency as well as promotes health and care of the vulnerable people/communities. All the activities of the Red Cross Society are financed by way of contributions and donations received from the general public. There is no provision of adjustment and regularization of the services of the petitioner in the Red Cross Society, Mandi. The fact that the petitioner was deputed as a Pharmacist vide order/letter dated 08.9.2002 in the office of the respondent No.3 has not been specifically denied. It has not been disputed that the petitioner worked continuously up-to 27.3.2008. The services of the petitioner stand terminated automatically on the expiry of the contract period. After the expiry of the contract, the petitioner entered into an agreement with the respondent No.3. He accepted the offer and is working w.e.f. 08.10.2008 in the office of the respondent No.3 through M/s. Utility Powertech Limited, Koldam Barmana, District Bilaspur. Red Cross Society is a non profitable institution. It is a voluntary organization for the welfare of the needy and poor people. Red Cross Society does not fall in the definition of an 'industry'. The provisions of the Act are not applicable to them (respondents No.1 and 2). Therefore, the question of the petitioner completing 240 days of work does not arise. The services of the petitioner have been rightly disengaged. He is gainfully employed. No provision of the Act has been flouted. The petitioner is not entitled to any relief. The claim petition is false and vexatious. They (replying respondents) have been dragged into unnecessary litigation.

In these circumstances, the respondents No.1 and 2 pray that the petition in hand be dismissed with heavy costs.

4. In his separate reply, the respondent No.3 has raised the preliminary objections to the effect that the claim petition is not maintainable. There is no privity of contract of employment between him (respondent No.3) and the petitioner. Shri Sanjay Thakur (petitioner) was under the direct employment of the respondents No.1 and 2. His services came along with the ambulance which was hired by him (respondent No.3) from the respondents No.1 and 2 for a specific period. No contract of employment was executed between him (answering respondent) and the petitioner at any point of time. No relationship of employer and employee exists between the parties. On merits, it has not been disputed that the services of the petitioner were engaged as a Pharmacist by the respondents No.1 and 2 and he worked as such up-to 27.3.2008. He (respondent No.3) had hired an ambulance from the respondents No.1 and 2. The petitioner was deployed as a Pharmacist by the respondent No.2 in the ambulance. The services of the petitioner were never engaged by him (replying respondent). When he (respondent No.3) started the hospital, new/fresh staff was recruited. There was no need to give an opportunity to the petitioner to join the service in the newly started hospital by him (respondent No.3). It has been disputed that after his disengagement, the petitioner is not gainfully employed. No provision of the Act has been violated. As such, the respondent No.3 too prays that the claim petition be dismissed.

5. In the rejoinders, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been admitted that vide letter dated 07.10.2008, he has been appointed as Nursing Assistant on contract basis by the Resident Engineer, M/s Utility Powertech Limited (a joint venture of Reliance Energy & NTPC). The provisions of the Act apply to the Red Cross Society. He was deputed by the respondents No.1 and 2 in the office of the respondent No.3. It has been owned that his services were never engaged by the respondent No.3.

6. Vide order dated 05.7.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 28.3.2008 by the respondents is violative of the provision of Section 25-F of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? *OPP.*
2. Whether the reference is not maintainable as alleged. If so, to what effect? *OPR.*
3. Whether the petitioner has no cause of action against the respondents No.1 and 2 as alleged. If so, to what effect? *OPR.*
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes. The services of the petitioner have been disengaged by the respondents No.1 and 2 only.  
 Issue No.2 : Partly Yes, Partly No  
 Issue No.3 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

## ISSUES NO. 1 AND 3

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Sanjay Thakur stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged for 180 days only. An agreement (Ex. R-1) was inked between him as well as the respondents No.1 and 2. He admitted that after his employment he was deputed in the office of the respondent No.3. He deposed that his services were also engaged by Utility Powertech Limited who used to pay him the wages etc. He worked up-to the year 2010 with M/s Utility Powertech Limited. The copies of the appointment letters issued by the Utility Powertech Limited are Marks RA to RC. He denied that neither his services were engaged nor disengaged by the Red Cross Society. He admitted that he worked on the ambulance hired by the respondent No.3 as per the instructions of the other respondents. He even admitted that from the date of his initial appointment i.e. 29.8.2002 to 27.3.2008, he worked with the Red Cross Society. He was never employed by the NTPC (respondent No.3). No salary was ever paid to him by the respondent No.3. He was paid the wages from the very beginning by the Red Cross Society.

10. Conversely, Shri Om Prakash Bhatia, Secretary, Distt. Red Cross Society, Mandi (respondent No. 1) testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondents No. 1 and 2.

In the cross-examination, he stated that at the time of the engagement of the services of the petitioner an agreement was executed. Its copy is Ex. R-1. Thereafter, on 29.3.2003 the agreement was renewed for 120 days only. The term of the renewed agreement expired in the month of June, 2003. After that, no agreement took place between the petitioner as well as the respondents No.1 and 2. He admitted that the petitioner served under them continuously from the year 2002 to 27.3.2008 as well as completed more than 240 days of work in each and every calendar year of his engagement. The wages were paid to the petitioner up-to 27.3.2008 by the Red Cross Society. He admitted that the petitioner was employed as a Pharmacist and was deputed in NTPC Limited, Koldam, Barmana. An agreement had taken place between the NTPC and the Red Cross Society. Its copy is Ex. RW1/C. He admitted that the services of the petitioner were terminated per order Mark-D. He also admitted that at the time of the disengagement of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. 18 persons are working in the Red Cross Society. They have an ambulance. He admitted that the petitioner was their permanent employee who used to remain with the ambulance.

11. Mark-A is the copy of a letter written to the State Chief Information Commissioner, Himachal Pradesh by the Secretary to the Governor and General Secretary, H.P. State Red Cross Society, Shimla.

12. Mark-B is the copy of the appointment letter dated 29.8.2002 written to the petitioner by the respondent No.2 (Chairman).

13. Mark-C is the copy of a letter written by the respondent No.1 in the month of September, 2002 to the respondent No.3. It unfolds that the petitioner was deputed to NTPC, Barmana to perform his duties as a Pharmacist with the ambulance.

14. Mark-D is the copy of an office order dated 27.3.2008 issued by the respondent No.2. It clarifies that the services of the petitioner were disengaged as the Senior Manager (HR), NTPC Koldam Hydro Power Project, Barmana, District Bilaspur intimated the Red Cross Society, Mandi that the services of the Pharmacist (petitioner) with the ambulance are no more required and the same be discontinued with immediate effect.

15. Mark-E is the copy of the letter dated January 12, 2008 written by the Senior Manager (HR), NTPC Limited, Kol Dam Hydro Power Project, Barmana to the respondent No.2. Vide this letter a request was made to discontinue the services of the Pharmacist provided with the ambulance with immediate effect.

16. Ex. R-1 is the copy of the agreement dated 2nd September, 2002 which was executed between the petitioner and the respondent No. 2. It depicts that the services of the petitioner were engaged for 180 days from the date of his employment.

17. Ex. RW1/B is the authority letter issued by the respondent No.2 in the name of the respondent No.1. As per this letter, the respondent No.1 was authorized to appear as a witness in the Court. 18. Ex. RW1/C is the copy of the notice inviting tenders for hiring an ambulance issued by the NTPC Limited, Koldam Hydro Power Project.

19. Mark-X is the copy of a letter dated 12th December, 2007 written to the petitioner by the respondent No.2. As per this letter, the information sought by the petitioner under the Right to Information Act, 2005 was provided to him.

20. At the very outset, I will like to say that in Indian Red Cross Society, Haryana State Branch, Indian Red Cross Society v. Additional Labour Court, Chandigarh, (1992) 1 LLN 211 (P&H) (DB), it has been held that the Red Cross Society is an industry. In view of this authoritative pronouncement, it cannot be countenanced by the respondents No.1 and 2 that the provisions of the Act are not applicable to them or this Court has no jurisdiction to hear and decide the matter.

21. From the pleadings of the parties and the evidence available on the record, it can be gathered that it is an admitted fact that an interview for the post of Pharmacist was held by the respondents No.1 and 2 on 23.7.2002. The petitioner participated in the interview and was selected. Appointment letter dated 29.8.2002 the copy of which is Mark-B was issued in his name by the respondent No.2 (Chairman). An agreement, the copy of which is Ex. R-1 was also executed on the 2nd day of September, 2002 between the petitioner and the Chairman, District Red Cross Society, Mandi (respondent No.2). Mark-B and Ex. R1 depict that the services of the petitioner were engaged for a period of 180 days w.e.f. 3rd September, 2002. Clause 5 of Ex. R-1 reads thus:-

“The engagement of the party of the first part shall stand terminated automatically on the expiry of the contract period or

- (a) In case some regular person is appointed to attend to the duties assigned to the party of the first part.
- (b) By the Chairman, District Red Cross Society, Mandi or his authorized officers without previous notice in case he is satisfied on Medical evidence that the party of first part is

unfit and is likely to continued to remain unfit for a considerable period by reasons of ill health disabling him from the discharge of the duties.

- (c) By the Chairman, District Red Cross Society, Mandi or his authorized officer without any previous notice if the party of the first part is found to be prima-facie guilty of any act of insubordination, moral turpitude or other misconduct or any breach or nonperformance of any of the provision of this presents, or is otherwise found unsuitable for efficient performance in the assigned duties.
- (d) By one month notice in writing given at any time during engagement under this agreement by the party of first part of party of the second part without any cause assigned.
- (e) The District Red Cross Society, Mandi shall pay to Sh. Sanjay Thakur a fixed monthly wages of Rs.2500.00 (Rupees two thousand five hundred only) and Sh. Sanjay Thakur shall not be entitled for any other service benefits. The wages shall be reduced proportionately for each absence”.

22. From the statement made by Shri Om Prakash Bhatia (RW1), it can be gathered that another agreement had taken place between the petitioner and the Red Cross Society on 29.3.2003 for 120 days only. The term of the renewed agreement came to an end in the month of June, 2003. Admittedly, after his appointment by the respondents No.1 and 2, the petitioner was deputed to NTPC Barmana to perform his duties as a Pharmacist with the ambulance provided to the respondent No. 3 by the respondents No.1 and 2 vide a letter written by the respondent No.1 in the month of September, 2002, the copy of which is Mark-C.

23. There is no denial of the fact that from the date of his initial engagement i.e. 29.8.2002 to 27.3.2008 the petitioner worked with the respondents No. 1 and 2 as well as completed more than 240 days of work in each and every calendar year of his employment. As already mentioned, the services of the petitioner were disengaged by the respondent No. 2 per office order dated 27.3.2008 the copy of which is Mark-D, after receiving the letter dated January 12, 2008 from the Senior Manager (HR), NTPC Limited, Koldam, the copy of which is Mark-E.

24. The petitioner (PW1) in his cross-examination admitted that his services were never engaged by the respondent No.3. Even the wages were not paid to him by the respondent No.3 at any point of time. RW1 admitted that from the date of his initial appointment to the date of termination, the payment was made to the petitioner by them (respondents No.1 and 2). The evidence adduced by the parties goes to show that no relationship of employer and employee ever existed between the petitioner and the respondent No. 3.

25. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

26. There is not even an iota of evidence on the file to establish that the provisions of the above quoted Section were complied with by the respondents No.1 and 2 before the disengagement of the services of the petitioner. That being so, I have not hesitation to conclude that the termination order dated 27.3.2008 (Mark-D) is bad in the eyes of law. The same is required to be set aside. The petitioner has a cause of action against the respondents No. 1 and 2.

27. During his cross-examination, the petitioner (PW1) admitted that his services were also engaged by the Utility Powertech Limited (a joint venture of Reliance Energy and NTPC Ltd.), Jamthal, District Bilaspur. He (PW1) admitted that he worked with Utility Powertech Limited up-to the year 2010 and Marks –RA to RC are the copies of the letters of appointment issued in his name by Utility Powertech Limited. This clearly shows that after the disengagement of the services of the petitioner by the respondents No.1 and 2, he was gainfully employed. Otherwise too, while testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period of his forced idleness. The petitioner has failed to discharge the initial onus that after the termination of his services by the respondents No.1 and 2, he was not gainfully employed. For these reasons, he is not entitled to the back wages. He (petitioner) is also not entitled to the seniority and continuity in service since from 10.10.2008 to 09.12.2010, he served under another employer viz. Utility Powertech Limited.

28. These issues are decided in favour of the petitioner and against the respondents.

#### ISSUE NO. 2

29. Taking into account my findings on the issues No.1 and 3 above, it is held that the claim petition/reference is not maintainable against the respondent No.3. However, the same lies against the respondents No.1 and 2.

30. This issue is decided accordingly.

#### *RELIEF*

#### (ISSUE NO. 4)

31. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable against the respondent No.3 fails. The same is dismissed against him. However, the claim petition succeeds in part and the same is partly allowed against the respondents No.1 and 2 only. The termination order dated 27.3.2008 (Mark-D) being wrong and illegal is set aside and quashed. The respondents No.1 and 2 are directed to reinstate the petitioner except back wages. It is made clear that the services of the petitioner will be re-engaged by the respondents No.1 and 2 within a period of three months from today failing which he shall be entitled to the back wages, seniority and continuity in service from the date of the termination i.e. 27/28 March, 2008 till the date of re-employment. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 205/2010  
Date of Institution : 22.7.2010  
Date of Decision : 03.08.2013

Shri Sanjeev Kapoor s/o Shri Kamlapati Kapoor, r/o H. No. 45/9, Bhagwan Mohalla, Mandi  
Town Mandi, H.P. 175001. *..Petitioner.*

*Versus*

The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P.  
*...Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.  
: Sh. Sunder Goel, Adv.

For the Respondent : Sh. M.P. Sharma, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of The Administrator, The Mandi Urban Co-operative Bank Ltd. Mandi, Distt. Mandi, H.P. to withdraw the allowances and reducing salary to initial basic pay w.e.f. 01.10.2005, without serving charge sheet and without holding inquiry and thereby changing the service conditions to work on reduced salary, without giving notice as per section 9A of the Industrial Disputes Act, 1947 to Sh. Sanjeev Kapoor S/O Sh. Kamlapati Kapoor and finally retrenchment of his services w.e.f. 01.7.2006 without complying with the provisions of Section 25-F of the Act *ibid* and not giving him consideration for re-employment by the employer from the date new appointment is made, in violation of provisions of section 25-G & H of the Act *ibid* is legal and justified? If not, to what back wages, seniority, service benefits and relief Sh. Sanjeev Kapoor S/O Sh. Kamlapati Kapoor is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was appointed as a clerk by the Board of Directors of the respondent-bank on regular basis in the month of September, 1992. Initial basic pay plus allowances as admissible under the H.P. State Cooperative Bank Limited were payable to him (petitioner). By taking recourse to the provisions of Section 37 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as 'the Societies Act'), the Registrar, Co-operative Societies, Himachal Pradesh after dissolution of the Board of Directors of the Mandi Urban Co-operative Bank Ltd., Mandi, appointed his nominee(s) viz. Gazetted Officers in the rank of Deputy/Joint Registrar from the Co-operative Department of Himachal Pradesh Government on account of the failing financial health of the bank on the basis of the action taken by the Reserve Bank of India. Presently, the bank is administered by a Board of Administrators consisting of three persons from the above said department. He (petitioner) is/was governed in respect of his service conditions by the service rules of the staff of the Mandi Urban Co-operative Bank Ltd. framed with the approval of the Registrar, Cooperative Societies, Himachal Pradesh, as required under the Societies Act. Rule 29 of the service rules provides that in case of retrenchment or premature retirement every employee shall be given three months' notice before his retrenchment or premature retirement or three months salary in lieu thereof with benefit of the provident fund on such salary. An employee will also be entitled to the encashment of the unavailed earned leave to his credit at the time of the retrenchment or premature retirement. The Board of Administrators of the bank passed resolution No.3, dated 22.9.2005, illegally and without any justification. Vide the said resolution it was decided to restrict his (petitioner's) pay to the basic pay only and disallow all other allowances to him as given from time to time w.e.f. 1<sup>st</sup> October, 2005. This decision of the Board of Administrators changed his (petitioner's) service conditions illegally, unilaterally, arbitrarily, capriciously and against the provisions of Section 9-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as the principles of natural justice. He (petitioner) has been punished without being heard per resolution No.3, dated 22.9.2005. The punishment has been handed over to him without any inquiry and the proven charge of misconduct. Not only this, by invoking Rule 29 of the service rules, the Board of Administrators of the bank has terminated his services with effect from 01.7.2006. Vide order dated 30.6.2006, his services have been disengaged w.e.f. 01.7.2006 after paying three months basic pay in lieu of the notice period. He had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. His (petitioner's) services have been retrenched on account of surplus-age which fact is emphatically denied. Sufficient funds are available with the respondent/bank. After his disengagement, some persons were employed/re-employed on contract basis by the respondent. He was not given an opportunity of reemployment which amounts to unfair labour practice. The retrenchment compensation was not paid to him at the time of the termination of his services. He (petitioner) preferred a Civil Writ Petition before the Hon'ble High Court of Himachal Pradesh for the redressal of his grievances. The said writ petition was dismissed as withdrawn for want of jurisdiction. Thereafter, a demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Mandi Zone, Mandi, but in vain. The respondent failed to inform the concerned authorities regarding the disengagement of his services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “1. The order passed on the basis of Resolution No.3 dated 22.9.2005 whereby the applicant/petitioner's pay was reduced to basic pay while denying all other permissible allowances be set-aside.
2. The permissible allowances over basic pay of the applicant/petitioner be restored ante September/October, 2005 and the arrears thereof allowed with interest @ 9% per annum.



3. The retrenchment order dated 3.4.2006 issued by the Administrator of the Bank be held illegal, void and the same be quashed/set-aside.
4. The applicant/petitioner be granted consequential benefit etc. treating the period of forced unemployment as on duty, & undisturbed seniority.
5. Any other relief that Ld. Court may think fit, proper and just in facts and circumstances may also be granted and justice done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged as a clerk on regular basis by the Board of Directors on 01.10.1992 in the pay scale of Rs.570-25-695-30-845-35-915-40-1075-50-1175/-. It stands admitted that the Board of Directors of the bank was dissolved by the Registrar, Cooperative Societies, Himachal Pradesh and he appointed his nominees to administer the affairs of the bank. The fact that the bank has framed the service rules has not been disputed. The services of the petitioner were rightly terminated as per Rule 29. Three months salary in lieu of the notice period was given to him (petitioner). Per resolution No.3, dated 22.9.2005, it was decided to restrict the pay of the petitioner to the basic pay only w.e.f. 01.10.2005. This resolution was rightly passed. Actually, the bank incurred heavy losses. Crores of rupees have eroded on account of misfeasance of the officials of the bank. Financial position of the bank became worst. To tide over the situation, the Board of Administrators had no option except to curtail the pay scale. It was resolved to fix the monthly salary on the initial scale of pay. The depositors raised hue and cry time and again to the effect that they are suffering because of the negligence of the officers/employees of the bank who were enjoying at their (depositors) cost by depriving them of their deposits. The bank is under restrictions. Day to day banking stands aborted. Only loan recovery process is initiated and the employees are surplus. The action has been taken by the bank (respondent) in public interest. Retrenchment order/notice dated 30.6.2006 was duly served upon the petitioner. He was also paid three months salary in lieu of the notice period. The provisions of the Act are not applicable. Two persons on contract basis were employed who are computer trained. In view of Sections 72 (1) (c) and 73 of the Societies Act, this Court has no jurisdiction to hear and decide the matter. Only the Registrar of Co-operative Societies has the jurisdiction to deal with this matter. It stands admitted that the writ petition instituted by the petitioner was dismissed as withdrawn for want of jurisdiction. The bank is not an industry as defined under Section 2(j) of the Act. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the bank suffered heavy losses due to the fault of its officials. He (petitioner) was in no way involved in the framing of the policies of the bank, its functioning and allied matters. He performed the duties assigned to him from time to time by the Bank Manager sincerely and efficiently. The self styled Board of Administrators of the bank adopted the policy of hire and fire which is impermissible. He (petitioner) has been thrown out of the service without approval of the Registrar of the Cooperative Societies.

5. Vide order dated 05.07.2011, following issues were struck by my ld. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.7.2006 is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

*OPP.*

2. Whether the reduction of the salary of the petitioner w.e.f. 01.10.2005 without any charge-sheet or enquiry is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what effect? *OPP.*
3. Whether this Court has no jurisdiction to entertain the reference as alleged. If so, to what effect? *OPR.*
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : No

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 3

8. This issue is taken up by me first for discussion as my findings of the same will impinge the outcome of other issues.

9. While taking me through the provisions of Sections 72 and 73 of the Societies Act, the ld. counsel for the respondent/bank argued that this Court has no jurisdiction to hear and dispose of the matter. Only the Registrar of Co-operative Societies is competent to decide the controversy.

On the other hand, the ld. counsel for the petitioner urged that the provisions of Sections 72 and 73 of the Societies Act are not attracted in the instant case. His client being a 'workman' and the respondent being an 'industry', this Court has the jurisdiction to deal with the matter.

10. To my mind, the contention of the ld. counsel for the petitioner holds the force and is sustainable. The dispute raised by the petitioner, who was an employee of the respondent bank, does not touch the constitution, management, or the business of a Co-operative Society viz. the bank. It is an admitted fact that against the termination order/notice dated 30.6.2006, the petitioner had preferred an appeal under Section 93 of the Societies Act before the Registrar, Co-operative Societies, Himachal Pradesh. Per letter dated 04.8.2008, the Registrar of the Co-operative Societies informed the petitioner/appellant that the appeal is not maintainable under the provisions of the Societies Act.

11. Strictly speaking, a dispute between a Cooperative Society and its workmen does not relate to the actual business of the Cooperative Society and, therefore, does not touch its business. A dispute as to the dismissal and claim of reinstatement is not a dispute falling within the jurisdiction of the Registrar of the Cooperative Societies functioning under the Societies Act. The power that can be exercised by an Industrial Tribunal or Labour Court under the Act cannot be exercised by the Registrar. Consequently, a dispute as regards dismissal from service cannot be determined by the Registrar. The Registrar of the Cooperative Societies has no power to order the reinstatement of a workman, if he finds the retrenchment/dismissal of the workman to be unjust.

12. In fact, this question is no longer res integra. In Bangalore Water Supply & Sewerage Board vs. A. Rajappa, 1978 LIC 467 (SC), it has been laid that the Co-operative Societies are the industries.

13. Our Hon'ble High Court in CWP No. 906 of 2005, decided on April 9, 2007 titled as The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors. and CWP No. 781 of 2005 titled as The Dehra Friends Co-operative Transport Society, Petitioner versus The Presiding Officer, Labour Court, Respondents, decided in the month of May, 2007, has opined that the Labour Court has the power and authority to decide the reference and the disputes like the one in question.

14. It is, thus, concluded that this Court has the jurisdiction to hear and decide the case/reference.

15. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 1 AND 2

16. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal. 17. The petitioner Shri Sanjeev Kapoor stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the bank has framed its service rules and he was removed from service as per Rule 29 of such rules. He also admitted that in the month of October, 2004 certain restrictions were imposed on the bank by the Reserve Bank of India because of which its functioning came to a halt. He feigned ignorance about the fact that the bank suffered losses of crores of rupees. He admitted that an inquiry was conducted against all the employees of the bank. He denied that his salary was reduced by the Board of Administrators only after the inquiry. He does not know that vide resolution No.1, dated 21.4.2006, the salary of all the employees of the bank was fixed at the initial scale(s). He is not aware of the fact that a meeting of the general house had taken place on 17.3.2006 in which the budget of the bank was not approved and it was noticed that maximum amount is being spent on the salary of the employees. He has no knowledge that the bank was computerized in the year 2007. He does not know that his services were disengaged by the bank in public interest being surplus.

18. Conversely, Shri Harvilas Behl, Assistant Manager, The Mandi Urban Co-operative Bank Ltd., Mandi, testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that the Administrators of the bank were appointed by the Registrar of the Co-operative Societies. The salary of the petitioner was reduced w.e.f. 01.10.2005. Approval qua reduction of salary was done in the general house meeting which took place in the month of March, 2006. No notice under Section 9A of the Act was served upon the petitioner regarding change of his service conditions. Before the termination of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. After the disengagement of the services of the petitioner, the bank needed a clerk and a computer operator, who were employed. Shri Hemant Kapoor was appointed as a computer clerk since he was senior amongst the employees whose services were terminated. He does not know that Smt. Madhu Malhotra and Shri Hemant Kapoor joined the service on a single day and the former is elder or younger in age to Shri Hemant Kapoor. When the services of the petitioner were disengaged, Shri Sunil Kumar was serving as a peon in the bank. Shri Sunil Kumar (Peon) has been promoted

as a clerk. Before employing new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. He denied that he has given a phoney statement.

19. Ex. PW1/B is the copy of an office order. It depicts that vide resolution No.3, dated 22.9.2005, the Board of Administrators of the respondent/bank decided to fix the monthly salary of the bank employees at the basic pay without any allowances w.e.f. 01.10.2005 considering the weak and poor financial health of the bank as well as its increasing losses in order to curtail the establishment cost. The name of the petitioner figures in this office order.

20. Ex. PW1/C is the copy of the retrenchment order/notice dated 30.6.2006 served upon the petitioner and seven other employees by the Board of Administrators of the bank. It unfolds that the Board of Administrators resolved per resolution No.8, dated 27.6.2006, to terminate the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution. A cheque was given to the petitioner as three months salary in lieu of the notice period. It was also mentioned that the petitioner shall be entitled to the other monetary benefits as per the service rules.

21. Ex. R1 is the copy of the service rules for the employees of the Mandi Urban Co-operative Bank Ltd., Mandi, Himachal Pradesh.

22. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. As per the reference received from the appropriate Government, this Court is required to decide:

- (i) Whether reducing the salary of the petitioner to the initial basic pay w.e.f. 01.10.2005 is violative of Section 9A of the Act or not? and
- (ii) Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is legal and valid or not?

23. At this stage, I will like to highlight that there are certain unmarked/un-exhibited documents on the record. A few documents were produced by the parties at the time of the arguments. They have been appended to the file of reference No.201 of 2010 (Shri Parveen Kumar Vaidya vs. The Administrator). These documents go to show that the monthly emoluments of the employees of the bank (including the petitioner) were fixed at their current respective basic pay(s) without any allowances w.e.f. 01.10.2005 vide resolution No.3, dated 22.9.2005, passed by the Board of Administrators as a measure of punishment. Office order Ex. PW1/B was issued only after the passing of the resolution dated 22.9.2005. All the documents are being looked into and considered by me for the just and proper decision of the case particularly when the petitioner (PW1) in his cross-examination admitted that an inquiry was conducted against all the bank employees.

24. Here I will also like to mention that the petitioner has concealed the material facts from the Court that he was charge-sheeted for his misconduct, an inquiry was conducted against him in which he took part, reasonable opportunity of being heard was afforded to him and the charges framed against him for causing huge losses to the bank directly/indirectly stood proved, where after, the Board of Administrators exercising the powers contained in Rule 21(4) of the service rules (Ex. R1) imposed the penalty to down grade the petitioner to the lower scale (initial scale) with immediate effect. Against the penalty imposed by the Board of Administrators, the petitioner had preferred an appeal as per Rule 22 of the rules *ibid* before the appellate authority (Registrar of the Co-operative Societies). The said appeal was partly allowed by the appellate authority. De-novo inquiry on the charges already framed against the bank employees was ordered by the appellate

authority. The petitioner did not participate in the de-novo inquiry. The findings of the earlier Inquiry Officer and the punishment awarded to him vide resolution No.3, dated 22.9.2005, were not disturbed by the officer, who carried out the de-novo inquiry, and the Board of Administrators of the bank as is evident from the proceedings dated 22.9.2009.

25. In para 3 of the statement of claim/demand, the petitioner has pleaded that he is/was governed in respect of his service conditions by the service rules (Ex. R1) as framed by the respondent/bank. As already mentioned, the penalty of reduction in pay was imposed upon the petitioner after he was found guilty of the misconduct and causing huge losses to the bank. It is not the case of the petitioner that fair inquiry was not conducted against him. No allegation of victimization or violation of the principles of natural justice has been put forth by the petitioner against the respondent. Since the salary of the petitioner was reduced as a measure of punishment after due inquiry in which he participated, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his service conditions were changed by the respondent in contravention of the provisions contained in Section 9A of the Act. The petitioner cannot canvass that there is a violation of Section 9A of the Act by his opponent.

26. Now, I proceed to decide the other limb of controversy between the parties i.e. as to whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is illegal and invalid or not?

27. There is no denial of the fact that the respondent bank has framed its service rules. They stand duly approved by the Board of Directors of the bank and the Registrar of Co-operative Societies, Himachal Pradesh. Rule 29 reads thus:-

“Retirement and retrenchment: In case of retrenchment or pre-mature retirement every employee shall be given three month’s notice before his retrenchment or premature retirement or three month’s salary in lieu thereof with benefit of Provident Fund on such salary. Such employee will also be entitle to salary and allowances for the period of earned leave at his credit”.

28. Admittedly, the services of the petitioner were retrenched by the respondent under the above noted rule per notice dated 30.6.2006, the copy of which is Ex. PW1/C. The retrenchment notice (Ex. PW1/C) reveals that the Board of Administrators of the bank had resolved vide resolution No.8, dated 27.6.2006, to disengage the services of the petitioner w.e.f. 01.7.2006 for the reasons explained in the resolution (surplus-age). In the notice of retrenchment, it was mentioned that the retrenchee shall be entitled to the monetary benefits as per para/Rule 29 of the service rules of the bank. A cheque was also forwarded to the petitioner on account of three months salary in lieu of the notice period. It is not the case of the petitioner/claimant that the notice of retrenchment was not received by him or the cheque has not been got encashed upto now. Further, it is not the version of the respondent that the provisions of Chapter VB of the Act are/were applicable to the bank and the services of the petitioner were retrenched in consonance with Section 25-N of the Act.

29. In para 5 of the statement of claim/demand, the petitioner has categorically pleaded that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.7.2006. This fact has not been denied specifically by the respondent in the corresponding para of the reply. Moreover, the petitioner (PW1) stated in the examination-in-chief that he had completed 240 days of service in a block of 12 calendar months anterior to the date of his retrenchment. This fact has not been challenged by the respondent at the time of the cross-examination. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side.

30. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

31. There is not even an iota of evidence on the record to show that the petitioner/workman was paid the compensation at the time of his retrenchment as envisaged under Section 25-F (b) of the Act. For this reason, the final termination of the services of the petitioner by the respondent with effect from 01.7.2006 is patently wrong and illegal.

32. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as per Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature.

In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent. 33. There is another reason for which the termination of the services of the petitioner by the respondent is illegal. In para 6 of the reply, the respondent has pleaded that two computer trained persons were employed in the bank on contract basis. The names of these two persons have not been disclosed by the respondent-bank. From the questions posed during the cross-examination to the petitioner (PW1) by the ld. counsel for the respondent, it can be gathered that the respondent bank was computerized somewhere in the year 2007 i.e. after the termination of the services of the petitioner. RW1 stated that computer operators were appointed on 21/9/2007. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by his adversary in terms of Section 25-H of the Act. The respondent failed to adhere to the provisions of this Section.

34. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

35. Such being the situation, I have no hesitation to conclude that the respondent has not flouted the provisions of Section 9A of the Act. The reduction in salary of the petitioner w.e.f. 01.10.2005 is legal and justified. However, the termination of the services of the petitioner by the respondent is bad in the eyes of law.

36. These issues are decided accordingly.

*RELIEF*

(ISSUE NO. 4)

37. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner regarding reduction of his salary in a wrongful manner being meritless fails. The same is hereby dismissed. However, the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2006 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 1st July, 2006 except back wages. It is clarified that the services of the petitioner will be reengaged by the respondent within a period of three months from today failing which the petitioner shall be entitled to the wages from the date of his termination to the date of reinstatement. Parties to bear their own costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 408/2009

Date of Institution : 18.7.2009

Date of Decision : 12.08.2013

Shri Shankar Lal s/o Shri Brij Lal, r/o Village Dharwai, P.O. Khargat, Sub Tehsil Sihunta,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Shankar Lal S/O Shri Brij Lal by Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 09-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of August 1996 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.



As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of August, 1996. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? *OPP.*
2. Whether the petition is not maintainable in the present form? *OPR.*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner?
4. Whether the petitioner has not come to the Court with clean hands as alleged? *OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? *OPR.*

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. Shri Shankar Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3060/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1996 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.176 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is August, 1996. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are/were associates of the petitioner whose name is at serial No. 176 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000

new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

### ISSUES NO. 2, 4 AND 5

27. Not pressed

### *RELIEF*

### (ISSUE NO. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the

continuity and seniority in service from the date of his illegal termination i.e. 09/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 268/2010

Date of Institution : 18.11.2010

Date of Decision : 03.08.2013

Smt. Shanti Devi w/o Shri Govind Ram, r/o Village Jagouti, P.O. Karsog, Tehsil Karsog, District Mandi, H.P. *..Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Karsog, District Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. L.B. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, DDA.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Smt. Shanti Devi W/O Shri Govind Ram Part Time Sweeper by the Divisional Forest Officer, Forest Division, Karsog, District Mandi, H.P. w.e.f. 01-04-2007 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to?”

2. At this stage, I will like to highlight that the reference has been received only against the Divisional Forest Officer, Forest Division, Karsog. In the claim petition/statement of claim, he has been arrayed as the respondent No.3. The State of H.P. through Secretary (Forests) Shimla and Divisional Forest Officer, Working Plan Division, Karsog at Sunder Nagar, District Mandi have been cited/added as the respondents No.1 and 2, respectively in the statement of claim/demand.

3. The case of the petitioner (as set out in the statement of claim/demand) is that her services were initially engaged as a part time Sweeper in the month of October, 1999 by the respondent No.2 viz. the Divisional Forest Officer, Working Plan Division, Karsog at Sunder Nagar. She worked as such up-to 31st March, 2007. On the said date, her services were terminated by a verbal order without assigning any reason. She was not given an opportunity of being heard. She had completed more than 240 days of work in each and every calendar years of her employment. Before her disengagement, no notice was served upon her by the respondents as per the prescribed procedure. After the retrenchment, she repeatedly requested the respondent No.3 (Divisional Forest Officer, Karsog) to re-engage her services in the Division. The respondent No. 3 recommended her case to the Conservator of Forests, Mandi (H.P.), but nothing was done. Her services have been terminated by adopting the method of pick and choose. The principle of 'last come first go' was ignored. The other workers who were serving in the office of the respondent No.2 have been adjusted in the office of the respondent No.3. Only her services have been disengaged. The work for which she was employed is of permanent nature. Sufficient work is still available with the respondent. Her work and conduct was above board. No complaint was received against her during the period of the engagement. The persons junior to her are still working. Legal notice dated 12.2.2008 was served upon the respondents by her, but in vain. The conciliation proceedings initiated by the Labour Officer-cum-Conciliation Officer, Mandi did not yield any fruitful result. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) That the respondents be directed to re-engage the applicant before the respondent No.3 from the date of her illegal termination.
- (ii) The respondent may kindly be directed to assign the seniority list and regularised the services of the applicant and also to pay the back wages to the applicant for the period in which, she remained out of service.
- (iii) Entire record/muster-roll may be brought for the kind perusal.

Or any other relief for which the applicant may be found, entitled may kindly be granted in favour of the applicant and justice be done”.

4. On notice, all the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. She has misrepresented herself and has approached the Court by concealing the material facts. The petitioner is estopped from raising the industrial dispute by her act and conduct.

On merits, paras 1 to 4 of the reply read thus:-

- “1. That in reply to para No.1 of the Claim Petition, it is submitted that the employee employer relation of the petitioner with that of respondent No.2 as a part time sweeper is not disputed. The applicant was deployed as a part time sweeper for four hours daily by the respondent No.2 for the sweeping cleaning of Range Office (Working Plan) at Karsog from October, 1999 to March 2007 (Mandays are being attached as annexure R-I). However, due to completion of the field works of Working Plan, the office of Range Officer (Working Plan) was shifted from Karsog to Sundernagar and the accommodation was vacated and handed over to the D.F.O. Territorial Karsog and as such there was no option then to disengage the services of the applicant as the same were no more required. It is further submitted that Working Plan Division is not a permanent establishment of the Forest Department and is windup as and when works relating to working plan is completed. Generally in a area the working plan operations takes place for 2/2 years and accordingly the services of casual workers are engaged and worker so engaged under the working plan/scheme are duly apprised about the above service conditions that their services shall be coterminous with the closer of the working plan operations. In the case of the petitioner also she was duly apprised about the above service conditions and the availability of works and on her being consenting for the same, the petitioner was engaged as a part time sweeper. The working plan operation at Karsog were initiated in the year 1999 and the same stand windup in the year 2007. The relevant copies of the notification are being attached herewith as annexure R II & III. Thus with the closure o the Working Plan operations at Karsog, no work is available with replying respondents to continue with the services of the petitioner.
2. That the contents of this para of the claim petition are wrong and hence denied. It is however, submitted that the disengagement of the petitioner is due the reason and circumstances mentioned in para 1 above. It is wrong to allege that the replying respondent had adjusted/reengaged other similarly situated casual/daily paid workmen in other establishment of the Forest Department. The service conditions of the staff viz a viz regular and the daily paid has been regulated as per availability of work as well as in accordance with the Working Plain Code as applicable to the establishment under the Working Plan.
3. That the contents of this para of the claim petition are wrong and hence denied. It is submitted that Working Plan Division Karsog was not a permanent establishment of the Forest Department and the applicant was engaged according to availability of work and on completion of work of Working Plan Division Karsog she was disengaged. The claim of the applicant for seniority among the part time workers of Karsog Forest Division is not justified hence her averments are denied. It is also submitted that the services of petitioner were not taken by the Respondent No.3 as such the question to retain the Juniors to the applicant in Karsog Forest Division does not arise. It is submitted that the work of Working Plan Division Karsog at Sundernagar has now been closed and the regular staff deputed on Working Plan duty has been posted in other Divisions as such the question to retain the juniors to the applicant does not arise. It is also not admitted that the respondent department has not followed the principles of “last come first go”.
4. That the contents of this para are admitted to the extent that the applicant has served a legal notice to the respondent No.2 on 12.2.2008, the reply of which stands given to the Counsel of the petitioner by the respondent No.2 vide letter No.317 dated 20.3.2008 which is annexed as Annexure R-IV”.

In these circumstances, the respondents pray that the petition in hand being meritless be dismissed.

5. No rejoinder has been filed by the petitioner/claimant.
6. Per order dated 12.1.2012, following issues were struck by my Id. Predecessor:
  1. Whether the disengagement of the petitioner w.e.f. 1.4.2007 is violative of the provisions of Sections 25-F, G and 25-H of the I.D. Act as alleged. If so, what relief the petitioner is entitled to?
  2. Whether the reference is not maintainable as alleged. If so, to what effect? *OPR.*
  3. Whether the reference is hit by the vice of delay and laches as alleged. If so its effect? *OPR.*
  4. Relief.
7. I have heard the Id. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 AND 2

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. Smt. Shanti Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim as a whole.

In the cross-examination, she admitted that she had joined the service as a part time safai karamchhari for four hours daily in the Working Plan Division. She denied that at the time of her engagement, it was conveyed to her that she has been employed on temporary basis and on the completion of the work of the Working Plan Division, her services will come to an end. She admitted that she was serving in the office of Range Officer (Working Plan), Karsog. That office stands closed. She admitted that the office of the Working Plan Division was shut in the month of April, 2007. She also admitted that the headquarter of the Working Plan Division was at Sunder Nagar and on closure of the office at Karsog, the entire record was shifted from Karsog to Sunder Nagar. She was the only safai karamchhari working at Karsog. No other safai karamchhari like her has been adjusted in service by the respondents. She denied that after the closure of the office of Working Plan Division, only the regular employees of the Forest Department were shifted/adjusted in the other offices as well as the services of the daily wagers and part time employees were disengaged. She admitted that she was made the payment on bill basis for the days she worked as a



safai karamchari. Further, she admitted that her services were terminated because of the closure of the office.

11. Shri Chet Ram (PW2) supported the cause of the petitioner.

In the cross-examination, he admitted that no Working Plan Division exists at Karsog.

12. Conversely, Shri Vinod Kumar Aggarwal, Divisional Forest Officer, Karsog (respondent No.3 in the claim petition) testified as RW1. He corroborated on oath the contents of the reply preferred by the respondents.

In the cross-examination, he denied that the services of the petitioner were disengaged in a wrongful manner.

13. RW2 is Shri Gopal, Dy. Ranger in the office of the Divisional Forest Officer, Karsog. He simply brought the record and proved Exts. R1 to R 64 i.e. copies of the payment vouchers relating to Smt. Kamla Devi, who was working as a safai karamchari in the office of Divisional Forest Officer (Working Plan), Karsog. He also stated that Smt. Kamla Devi is presently employed in the office of Divisional Forest Officer, Sunder Nagar.

14. Ex. PW1/B is the mandays chart relating to the petitioner.

15. Ex. PW1/C is the copy of legal notice dated 12th February, 2008 served upon the Divisional Forest Officer, Working Plan Division, Karsog at Sunder Nagar by the petitioner under Section 80 CPC.

16. Ex. PW1/D is the copy of the reply dated 20.3.2008 sent by the Divisional Forest Officer, Working Plan Division, Karsog at Sunder Nagar to the notice dated 12.2.2008.

17. Ex. RW1/A is also the mandays chart relating to the petitioner, who worked as a part time sweeper. It corresponds to Ex. PW1/B.

18. Ex. RW1/B is the copy of a letter written by Ministry of Environment and Forests, Govt. of India to the Secretary (Forests) to the Government of Himachal Pradesh regarding approval of Working Plan of Karsog Forest Division.

19. Ex. RW1/C is the copy of a letter dated 20th December, 2007 written by the Chief Conservator of Forests, Working Plan and Settlement, Mandi. This letter details the recommendations made by Divisional Forest Officer (Working Plan Division), Karsog for winding up of the Working Plan Division by making the arrangements suggested by the Divisional Forest Officer (Working Plan).

20. Ex. D1 is the copy of a letter dated 26th November, 2009 written by the Pr. Chief Conservator of Forests, Himachal Pradesh. It postulates the policy to regulate the services of part time workers.

21. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Govt. and the matters incidental thereto. As already mentioned, the reference has been received by this Court from the appropriate Govt. only against the Divisional Forest Officer, Forest Division, Karsog, who has been joined/shown as respondent No. 3 in the statement of claim/demand. The other two respondents are

the State of H.P. through Secretary Forests Shimla (respondent No.1) and the Divisional Forest Officer (Working Plan Division), Karsog at Sunder Nagar (respondent No.2).

22. In a book titled as Bagri on law of industrial Disputes (Third Edition 2001) at page No.435 (Volume 1), it has been clarified that ‘Under sec. 18(b) it is within the competence of a tribunal to summon any party to appear in the proceedings as a party to the dispute, but that did not empower the tribunal to enlarge the ambit or alter the character of the dispute by making an award against the contractor when the dispute referred to it was between the principal employer and the workmen of the contractor [Abraham v. IT, (1958) II LLJ 725 (Ker)]. If a reference itself is ineffective because of the party who was not the employer being treated as the employer, the impleading of the real employer at a subsequent stage can not retrospectively validate the reference. The government alone has the power to make a reference. If a reference is no reference on account of the lack of an essential ingredient, the tribunal cannot assume the power to plug the vacuum and make a reference of its own by bringing a new party on the record [Eastern Plywood Co Ltd. v. Pandey, (1955) II LLJ 351 (IT)].’

23. At the cost of reiteration, I will like to add that pursuant to the industrial dispute raised by the petitioner, the reference has been received in this Court from the appropriate Government only against the Divisional Forest Officer, Forest Division, Karsog. It is an admitted fact that the services of the petitioner were never engaged by the Divisional Forest Officer, Forest Division, Karsog. Therefore, the question of the termination of her services in a wrongful manner by the latter does not arise. No relationship of employer and employee exists between the parties to the industrial dispute i.e. the petitioner and the Divisional Forest Officer, Forest Division, Karsog.

24. That being so, I have not hesitation to conclude that the reference/claim petition is not maintainable against the Divisional Forest Officer, Forest Division, Karsog. The services of the petitioner were never disengaged by the respondent (as per the reference) in contravention of any provision of the Act. The petitioner is not entitled to any relief.

25. To be fair to the Id. counsel for the petitioner, I will like to say that in support of his case, he relied upon a ruling titled as Bhim Sen, Petitioner vs. Himachal Pradesh State Electricity Board through its Secretary and another, Respondents, 2013 (1) Shim. LC 401 (HP). With humility, I will like to mention that the trite laid down in Bhim Sen’s case in no way comes to the rescue of the petitioner since in that case, the petitioner/claimant was the employee of the respondent/Board against whom the industrial dispute was raised and received by the Court/Tribunal for adjudication. The same is not the situation in the present case.

26. These issues are decided against the petitioner and in favour of her opponent(s).

### ISSUE NO. 3

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award

dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

28. This issue is decided in favour of the petitioner and against the respondents.

*RELIEF*

(ISSUE NO. 4)

29. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 137/2012

Date of Institution : 19.1.2012

Date of Decision : 01.08.2013

Shri Sher Singh s/o Shri Bhadru Ram, r/o VPO Sainthal, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Sher Singh S/O Sh. Bhadru Ram, VPO Sainthal, Tehsil Joginder Nagar, Distt. Mandi, by the Executive Engineer, IPH Division Padhar, Distt. Mandi, from time to time during the years 1998 to 2001 without complying with the provisions of section 25-F, G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.04.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.04.1998 to 31.12.1999, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.04.1998 to 31.12.1999 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.

- (ii) The Hon'ble Court again directed to respondent to granted the work-charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant is beldar seniority list of workcharges/regular above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.04.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.03.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2001 is illegal and unjustified as alleged? *OPP.*
2. Whether the petition is not maintainable in the present form? *OPR.*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *OPR.*
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR.*
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Sher Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged workers.

14. Exts. P-1 to P-36 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.04.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.04.1998. From 06.1.1999 to 31.12.2001, the petitioner was provided the work for more than 240



days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of

which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

*RELIEF*

(ISSUE NO.5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 67/2012  
Date of Institution : 06.01.2012  
Date of Decision : 05.08.2013

Shri Sohan Singh s/o Shri Tradhu Ram, r/o Village Nansai, P.O. Sidhpur, Tehsil Sarkaghat,  
Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Sohan Singh S/O Sh. Tradhu Ram, Village Nansai, P.O. Sidhpur, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 01.8.2000. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and the retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “(i) That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set-aside
- (ii) The permission granted by the specified authority-cum- Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- (iii) The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.08.2000 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 20.09.2012, following issues were struck:-

- 1. Whether the services of the petitioner were terminated by the respondent w.e.f. 08-7-2005 wrongly and illegally as alleged? *OPP.*
- 2. Whether the reference is not maintainable in the present form? *OPR.*
- 3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? *OPR.*
- 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? *OPR.*

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Sohan Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

11. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.8.2000 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 02.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

16. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

17. From the statement made by the respondent (RW1) coupled with the seniority list placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

18. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 AND 5

20. Not pressed.

ISSUE NO. 3

21. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the

claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

22. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

23. This issue is also decided in favour of the petitioner and against the respondent.

### *RELIEF*

(ISSUE NO. 6)

24. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 05th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 298/2012

Date of Institution : 02.08.2012

Date of Decision : 07.08.2013

Shri Surinder Kumar s/o Shri Jagdish Chand, r/o Village Ghont, P.O. Kandwari, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division Baijnath, District Kangra, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Surinder Kumar S/O Sh. Jagdish Chand, Village-Ghont, P.O. Kandwari, Tehsil Palampur, Distt. Kangra, H.P. by the Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, from time to time during 1999 to 2007, without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on muster roll basis by the respondent on 15.4.1999. No appointment letter/order was issued in his name by the respondent/department. From the date of his initial engagement up-to September, 2007 muster rolls for 15 days in a month were issued in his name by the respondent. He was not provided the work and given the artificial break for 15 to 16 days. Sometimes the muster roll for the whole month was issued in his (petitioner's) favour and on the expiry of the said month his services were terminated by the respondent without any written order. The breaks were given by the respondent from time to time so that he does not complete 240 days of work for the purpose of the regularization of his services as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). At the time of his disengagement after every one month, works and funds were available with the respondent/department. The persons junior to him (petitioner) were retained in service by the respondent and they worked continuously. The names of the juniors are Shri Lakhwinder Singh and Smt. Kanta Devi etc. His (petitioner's) seniority was ignored by the respondent and the muster rolls were not issued in his name continuously by the respondent/department. During the period of his disengagement, he was not gainfully employed. The services of the persons junior to him, who were not given the intentional breaks have already been regularized by the respondent after completion of eight years of service. He (petitioner) is also entitled to the regularization of his services in the regular pay scale from the date of the regularization of the services of his juniors



alongwith the consequential service benefits. A similar case pertaining to the same Division instituted by the workman Shri Suresh Kumar bearing Reference No.23/2010 has already been decided in favour of the labourer by this Court per Award dated 28.11.2011. It was held by this Court that the breaks in service given by the respondent to Shri Suresh Kumar were fictional in nature and the same will have no effect on his seniority and continuity in service. It was also ordered by this Court that the seniority of Shri Suresh Kumar shall be reckoned from the date of his initial appointment. The break period is required to be counted as continuous service. The respondent indulged in unfair labour practice as well as contravened the provisions of Sections 25-F and 25-G of the Act. Demand notice dated 10.6.2010 was served upon the respondent by him (petitioner), but in vain.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court may kindly be set aside the illegal break period of applicant from year 1999 to 2007 and directed to respondent to condone the breaks period in continuity of service of applicant.
- (ii) The Hon’ble Court may kindly be again directed to respondent to pay the back wages of breaks period along with interest @ 12% per annum.
- (iii) The Hon’ble Court further directed to respondent to consider the case of applicant for regularization as per the seniority of applicant after completion of 8 years or from the date of his junior have been regularized in the regular pay scale Rs.4900-10680/- + grade pay and usual allowances as applicable to similar situated employees of the state government from time to time and also pay the arrears to the applicant from the date of his regularization to onwards.
- (iv) Any other relief the Hon’ble Court deems fit may kindly be granted in the favour of applicant and against the respondent in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are necessary parties to the petition. They have not been joined as parties/respondents, because of which the petition is bad for non-joinder of the necessary parties. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the employer employee relationship exists between the parties i.e. the petitioner and the respondent/PWD Department. However, it has been pleaded that the services of the petitioner were initially engaged on 15.4.1999 by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. On account of the surplus labour in the National Highway Division, the petitioner was transferred to his (respondent’s) office in the month of November, 2004. Since then, the petitioner is working under him (respondent). No artificial/fictional breaks were provided to the petitioner at any point of time. Actually, the petitioner was an intermittent worker. He used to report for duty as per his convenience. As and when he came present, muster rolls for the whole month were issued in his favour. Shri Lakhwinder Singh etc. are senior to the petitioner. Moreover, from the very beginning they are serving under him (respondent). No dispute regarding the intentional breaks, if any, was raised by the petitioner at the relevant time. With the passage of time, the industrial dispute has become stale and faded away. He

(respondent) did not indulge in any unfair labour practice. No provision of the Act has been violated. He had no intention to deprive the petitioner from working in continuity. As and when he (petitioner) reported for duty, his services were duly engaged. The facts of Reference No. 23/2010 are/were different than the instant case. The Award dated 28.11.2011 cannot be used as a precedent. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) has not been given the breaks in service by the respondent w.e.f. 01.1.2008. He is working continuously from that date. In Reference No. 110/2006, decided on 02.11.2010 titled as Him Shakti PWD Karamchari Sangh v/s Executive Engineer, HPPWD, Division (B&R), Joginder Nagar, it has been already held by this Court that the State of Himachal Pradesh or the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the lis.

5. Per order dated 04.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the years 1999 to 2007 is illegal and unjustified as alleged? *OPP.*
2. Whether the petition is not maintainable in the present form? *OPR.*
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *OPR.*
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? *OPR.*
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? *OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. Shri Surinder Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that initially his services were engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. Subsequently, being surplus, he was transferred in the month of November, 2004 to the HPPWD (B&R) Division, Baijnath. He denied that he used to work as per his sweet will and convenience as well as fictional breaks were not provided to him by the respondent/department. He also denied that he has instituted a phoney petition to harass his opponent.

9. Conversely, Shri J.S. Guleria, Executive Engineer, HPPWD (B&R) Division, Baijnath (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were given to the petitioner from time to time so that he does not complete 240 days of continuous service. He also denied that the workmen junior to the petitioner, whose names figure in the list Ex. RW1/B, completed 240 days of work earlier to him. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex.PW1/B is the copy of the letter dated 14th September, 2007 written by the Principal Secretary (PW) to the Government of Himachal Pradesh. Vide this letter, all the Chief Engineers and Executive Engineers etc. were directed to provide muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the mandays chart pertaining to Shri Harbans Lal and six other daily wagers working under the respondent.

13. Ex. RW1/C is the copy of the reply submitted by the respondent before the Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala during the conciliation proceedings which were initiated pursuant to a demand notice served by the petitioner under Section 2A/2K of the Act.

14. It is the admitted case of the parties that the services of the petitioner were initially engaged by the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar. The petitioner was transferred in the month of November, 2004 from the National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Baijnath being surplus. There is no denial of the fact that the petitioner is still serving the respondent/department.

15. The mandays chart Ex. RW1/A is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged by the respondent/department on 15.4.1999.

16. The version of the petitioner is that from the date of his initial engagement to August/September, 2007 artificial/fictional breaks were provided to him by the respondent wrongly and illegally. While denying the said fact the respondent has pleaded that the petitioner was an intermittent worker. He used to work as per his convenience. As and when the petitioner reported for duty, his services were duly engaged and the muster roll was issued in his name.

17. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on

account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

18. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is

to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

19. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

20. Now comes the all important question as to whether artificial/fictional breaks were provided by the respondent to the petitioner as alleged or not?

To my mind, the answer to this query is in the affirmative. The mandays chart Ex. RW1/A clarifies that from the date of his initial engagement to 31.8.2007, work for all the months was not provided to the petitioner by the respondent. The muster roll used to be issued for an entire month in the name of the petitioner and in the next month, no muster roll was issued in his favour by the respondent/department. If the petitioner used to willfully remain absent from duties from time to time (as alleged), then why no show cause notice was issued to him by the respondent and why no disciplinary proceedings were initiated against the petitioner by the respondent/employer? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The mandays chart Ex. RW1/B pertaining to Shri Harbans Lal and others unfolds that the persons junior to the petitioner were provided the work for 240 days or more by the respondent in a block of 12 calendar months. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

21. The action of the respondent in not issuing intentionally the muster rolls to the workman for at least 240 days in a calendar year or after the gap of a month/months due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 5

23. Not pressed.

ISSUE NO. 3

24. Taking into account my findings on the issue No.1 above, it is held that the State of Himachal Pradesh and the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the petition. They may be the proper parties.

24A. This issue too is decided in favour of the petitioner.

ISSUE NO. 4

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. While testifying in the Court as PW1, the petitioner has given his age as 32 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

27. This issue is also decided in favour of the petitioner and against the respondent.

#### *RELIEF*

(ISSUE NO. 6)

28. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 407/2009

Date of Institution : 18.7.2009

Date of Decision : 12.08.2013

Shri Thakuru s/o Shri Dumnu, r/o Village Kalhori, P.O. Tikri, Tehsil Bhattiyat, District  
Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Thakuru S/O Shri Dumnu by Executive Engineer, I.&P.H. Division Dalhousie, Distt. Chamba, H.P. w.e.f. 15-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of April 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act. As such, he (petitioner) prays that the termination order be upset. The respondent be

directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of April, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 15.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? *OPP.*
2. Whether the petition is not maintainable in the present form? *OPR.*
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? *OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? *OPR.*



5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Thakuru (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 11.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 15.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 11.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of April, 1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 15.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.57 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is April, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 57 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000

new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

### ISSUES NO. 2, 4 AND 5

27. Not pressed

### *RELIEF*

### (ISSUE NO.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the

continuity and seniority in service from the date of his illegal termination i.e. 15/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 319/2012

Date of Institution : 03.09.2012

Date of Decision : 02.08.2013

Shri Tilak Raj s/o Shri Hoshiyar Chand, r/o Village Hilor, P.O. Sahil, Tehsil Pangi, District  
Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Killar Pangi, District Chamba, H.P.  
*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T.R. Bhardwaj, AR  
Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Sh. Tilak Raj S/O Sh. Hoshiyar Chand daily wage workman w.e.f. November, 2005 by the Executive Engineer, HPPWD Division Killar, Tehsil Pangi, Distt. Chamba, H.P. without complying with the section 25-F of the

Industrial Disputes Act, 1947 and retaining the junior workmen as alleged by the workman, is legal and justified? If not, to but back wages, seniority, service benefits and relief Sh. Tilak Raj S/O Sh. Hoshiyar Chand workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar on muster roll basis by the respondent in the month of August, 1997. He worked as such up-to the month of November, 2002. In the said month, his services were terminated by the respondent by an oral order. Against the illegal termination, he preferred O.A. No.1214/2002 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla. His services were re-engaged by the respondent in the month of January, 2003 and he worked up-to the month of November, 2005. During the period of his employment, the respondent used to give him the artificial/fictional breaks so that he does not complete 160 days of work (Pangi is tribal area) in a block of 12 calendar months as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the month of November 2005, his services were once again disengaged/finally terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. He has spotless service record and never remained absent from his duties. Break period is required to be counted for the purpose of continuous service. Before the retrenchment of his services the overall Divisional level seniority list of the daily waged workmen working under the respondent was neither circulated nor got noted down from the concerned workers. At the time of his retrenchment, the persons junior to him namely S/Sh. Shiv Kumar and Surinder Kumar etc. were retained in service by the respondent. The juniors were also provided the work in continuity by the respondent/department. The latter failed to abide by the principle of 'last come first go'. Not only this, after his disengagement, new/fresh hands were engaged by the respondent. The persons junior to him, whose services were terminated by the respondent, have also been re-engaged on muster roll basis. He (petitioner) was not provided an opportunity of re-employment. If artificial breaks would not have been given to him and his services would not have been disengaged illegally, he would have completed 10 years of continuous service on 01.1.2007. He would have become entitled for regularization of his services w.e.f. 01.1.2008 as per the observations made by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He is also entitled for regularization under eight years regularization policy of the Government. The services of his juniors have already been regularized by the respondent/department. He has suffered heavy financial loss. From the date of his illegal termination he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(a) The oral orders of termination/retrenchment of my services passed by the respondent from the month of November, 2005 be set-aside being illegal arbitrary and unjustified.
- (b) To direct the respondent to re-instate the services of petitioner w.e.f. November, 2005 along with full back wages, seniority including continuity of services as the petitioner remained un employed since the date of illegal retrenchment/termination of services.
- (c) To direct the respondent to count the period of intermittent/fictional breaks given in the entire service to the applicant from December, 1997 November, 2005 from time to time be counted towards the calculation of continuous service of 160 days in each year (as laid down for the tribal area of Pangi Tehsil) under Section 25-B of ID Act 1947 and regularize the service of the petitioner w.e.f. 01.01.2007 under 10/8 years regularisation policies of the Govt. alongwith all consequential benefits.

- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) To direct the respondent to re-engage petitioner on muster roll basis pending final decision of the case.
- (f) Any other relief as the Hon'ble Court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of August, 1997. He worked intermittently up-to the year 2005. Neither any intentional break was given to the petitioner during the course of his employment nor his services were terminated in the month of November, 2005 as alleged. The mandays chart of the petitioner is annexure R1. In the year 2005, the petitioner voluntarily left the service. As per the instructions issued by the Government of Himachal Pradesh, 160 days of work during each calendar year for eight years continuously is required for seniority/regularization. The petitioner did not fulfill the said criteria because of which he is/was not qualified to become a regular worker. In November, 2005, the petitioner abandoned the service for taking up the profession of a whole time agriculturist. In the tribal area of Pangti, the working season is from the month of May to the month of October. The petitioner never reported for duty during the working season. The persons who worked in continuity and were punctual became eligible for regularization of their services as per the policy of the State. Since the petitioner willingly left the service, the question of issuing any notice to him or paying the retrenchment compensation does not arise. He (petitioner) has no cause of action. The principle of 'last come first go' was strictly followed. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner failed to join his duties despite the availability of the work. He is not entitled to any relief. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.3.2013, following issues were struck:

- 1. Whether the termination of the services of the petitioner by the respondent in the month of November, 2005 is illegal and unjustified as alleged? *OPP.*
- 2. Whether the reference is not maintainable in the present form? *OPR.*
- 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? *OPR.*
- 4. Relief.
- 6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
- 7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Tilak Raj stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he willingly left the job. He admitted that some of the workmen whose names have been disclosed by him are his seniors. He denied that he is not entitled to the reemployment etc.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD Division Killar (Pangi) (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that after the petitioner left the job no notice was given to him calling upon him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He admitted that mostly no work is undertaken during the months of November to April in Pangi area and the muster rolls are not issued in favour of the labourers.

10. Ex. PW1/B is the list of daily waged workers who have completed eight years or more service as on 31.3.2008 with a minimum of 240 days in non tribal area and 180/160 days in tribal area in each calendar year. The screening committee recommended the workers whose names figure in Ex. PW1/B for the regularization of their services.

11. Exts. PW1/C and D are the mandays charts in respect of Shri Mohan Lal and Shri Chunku Ram, respectively.

12. Ex. PW1/E is the mandays chart pertaining to Shri Chunni Lal and 12 other daily waged workers working under the respondent.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks to the petitioner by the respondent during the period of his employment. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per the mandate of Section 10(4) of the Act.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of August, 1997 and he worked as such up-to the month of November, 2005. The said fact finds support from the mandays chart Ex. RW1/A which is not in dispute.

16. The version of the petitioner is that in the month of November, 2005 his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner who was an intermittent worker, left the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner asking him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/A unfolds that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. November, 2005 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

19. From the mandays charts and the list of the workers whose names were recommended for the regularization of their services (Exs. PW1/B to E), it can be gathered that at the time of the retrenchment of the services of the petitioner, the persons junior to him were retained in service by the respondent. The latter failed to adhere to the principle of 'last come first go'. Not only this, in the years 2006 and 2007 new/fresh hands were engaged by the respondent. There is nothing on the record to show that at the time of engaging new/fresh hands an opportunity of reemployment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act a workman need not to complete 240/160 days of work in a block of 12 calendar months anterior to the date/month of his termination.

20. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

21. Not pressed.

## ISSUE NO. 3

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.



23. While testifying in the Court as PW1, the petitioner has given his age as 48 years. In the cross-examination, he admitted that he earns his livelihood by doing the work of agriculture. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent.

*RELIEF*

(ISSUE NO. 4)

25. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. November, 2005 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of August, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 287/2012  
Date of Institution : 16.07.2012  
Date of Decision : 29.08.2013

Shri Uttam Singh s/o Shri Nanak Singh, r/o Village Tika Nagrota, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

*Versus*

The Area Manager, H.P. State Civil Supplies Corporation Limited, Regional Office, Dharamshala, District Kangra, H.P. *..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. M.S. Jamwal, Adv.

For the Respondent : Sh. Arvind Kumar, Adv.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether payment of less wages than fixed under The Minimum Wages Act, 1948 to and termination of services during October, 2009 of Shri Uttam Singh S/O Shri Nanak Singh, R/O Village Tika Nagrota, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. as part time Sweeper by the Area Manager, H.P. State Civil Supplies Corporation Limited, Regional Office, Dharamshala, District Kangra, H.P. is legal and justified? If not, what amount of difference of wages on account of less wages paid to him than fixed under the Minimum Wages Act, 1948, back wages, seniority, past service benefits and amount of compensation the above Ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that in the month of April, 1988 his services were engaged as a part time Sweeper by the respondent. He used to render his services in the whole sale godown of the Himachal Pradesh State Civil Supplies Corporation Limited at Village Nagni-Bhadwar, Tehsil Nurpur, District Kangra, (H.P.). Wages of Rs.300/- per month were being paid to him by the respondent/Corporation. He discharged his duties honestly and diligently. Part time wages @ Rs.300/- per mensem from April, 1988 to 31<sup>st</sup> March, 1992 were paid to him by the respondent. In April, 1992 the wages were increased from Rs.300/- every month to Rs.500/- per month. This monthly amount of Rs.500/- as part time wages was paid to him by the Incharge of the wholesale godown upto 30th September, 2009. In the month of October, 2009, the Incharge of the wholesale godown started paying him (petitioner) the part time wages @ Rs.75/- per month instead of Rs.500/-. He refused to accept the said payment. He is working as a part time sweeper in the wholesale godown till date. He (petitioner) sought the information from the respondent under Section 3 of the Right to Information Act, 2005 regarding the provision of law on the basis of which his part time salary has been reduced from Rs.500/- to Rs.75/- each month and as to why his part time job rendered for 22 years has not been considered as the whole time job as well as how many years are further required to convert him into a whole time sweeper? The respondent failed to provide the desired information. He (petitioner) sent a memo dated 29.3.2010 to the respondent, but in vain. On 10.5.2010, he (petitioner) preferred an appeal against the respondent under Section 19 of the Act *ibid*. Thereafter, the information was supplied by the respondent. After that, a letter dated 28.10.2010 was addressed by him to the Labour Inspector, Nurpur for the redressal of his grievances. The letter/demand notice did not have the desired effect. The action of the respondent reducing his part time salary is wrong and illegal. It is also violative of the provisions of the Minimum Wages Act, 1948 (11 of 1948, ‘The Wages Act’ for short). He is entitled to the back wages, service benefit from part time sweeper to the full time sweeper and the seniority etc.

As such, as is evident from para 7 of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“(i) That the respondent may kindly be directed to pay the minimum part time wages from October, 2009 onwards to the applicant against proper receipt with interest and the benefits of section 22-D of the minimum wages Act as amended till date may also be granted in his favour.

- (i) That the amount of different of wages on the account of less wages paid to him than fixed under the Minimum Wages Act, 1948 as amended till date from the date of implementation may also be granted in favour of the applicant.
- (ii) That keeping in view the long standing services of the applicant as part time worker, the Hon'ble Court may kindly direct the respondent to convert his services into whole time worker as per the policy of the Govt. of Himachal Pradesh.
- (iii) That the respondent be directed to compensate the applicant with the amount of Rs.1,00,000/- for causing him undue hardship, mental agony as damages beside litigation fee of Rs.10000/-.
- (iv) That the respondent be directed not to disengage the services of the applicant in future".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. This Court has no jurisdiction to hear and decide the matter. The petitioner is not his (respondent's) employee as defined in the Wages Act. No minimum rates of wages have been fixed by the corporation so far. At no point of time, the services of the petitioner were engaged as a casual, contractual or part time labourer. He (petitioner) was never paid fixed minimum rates of wages. The petitioner never used to mark his presence in any register. No muster roll was issued in his name. He is not entitled to the regularization as claimed. The petitioner was doing the work of loading and unloading of the goods as and when the supply came to the godown or went out. He was called alongwith the others as per the requirement. The payment used to be made according to the loading and unloading of the articles done which used to be divided by the persons doing the said work. Apart from it, the petitioner used to broom the store/godown measuring approximately 12' x 12' for five to ten minutes. He was paid Rs.100/- every month till September, 1997 for the brooming. Since the petitioner was never employed by him (respondent), he has no locus standi to sue.

On merits, it has been denied that the services of the petitioner were engaged as a part time sweeper in the month of April, 1988 and he was paid the wages @ Rs.300/- per month from April, 1988 to 31<sup>st</sup> March, 1992. Actually, the petitioner used to clean the store measuring 12' x 12' approximately for five to ten minutes every day. He was paid Rs.100/- each month from the year 1988 to September, 1997. With the increase of the price index, he (respondent) started paying Rs.150/- per mensem to the petitioner. Rs.150/- every month were paid to the petitioner up-to September, 2000. From the said month to September, 2009, monthly payment of Rs.500/- was made to the petitioner for brooming the store. Corporation has the godowns in the entire State of Himachal Pradesh. At each and every place the persons cleaning the godowns were being paid different amounts. In the proceedings of the head office, which were conveyed vide letter dated 14.5.2007, it was decided that all the persons (including the petitioner) who clean the godowns should be paid the fixed amount of Rs.75/- per month. The petitioner did not work after September, 2009. What ever information was sought by him, the same was duly supplied. No part time salary was ever paid to the petitioner. Therefore, the question of the reduction of his salary does not arise. The services of the petitioner were never engaged as claimed. For this reason, there is no question of the disengagement of his services in contravention of the provisions of the Industrial Disputes Act, 1947 (14 of 1947). No provision of the Wages Act or the Industrial Disputes Act has been flouted. The petitioner has concealed the material facts from the Court. The claim preferred by him is false and vexatious. The petitioner is trying to mislead the Court to take undue advantages.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy and exemplary costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he is not working in the godown after September, 2009.

5. Per order dated 28.02.2013, following issues were struck:

1. Whether the payment of less wages to the petitioner by the respondent is illegal and unjustified as alleged? *OPP.*
2. Whether the termination of the services of the petitioner by the respondent during the month of October, 2009 is illegal and unjustified as alleged? *OPP.*
3. Whether the petition is not maintainable in the present form? *OPR.*
4. Whether the petitioner has no locus-standi to sue? *OPR.*
5. Whether this Court has no jurisdiction to hear and decide the matter? *OPR.*
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Not pressed.

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Uttam Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that no appointment letter was issued in his name by the respondent/corporation. He admitted that the presence of every employee of the corporation is marked in the attendance register and he never marked his presence in that register. He also admitted that his name was not incorporated in the muster roll(s) issued by the respondent. Further, he admitted that he used to do the work of loading and unloading from time to time as per the requirement. Other persons also used to do the work of loading and unloading with him. He admitted that the payment for the said work used to be made to him and the others by the

respondent/corporation. He even admitted that the size of the store/godown of the respondent is 12 x 12 feet. He used to broom the store daily. He denied that the brooming was done by him at occasions. He admitted that the respondent kept on paying him Rs.100/- every month up-to September, 1997 for the brooming. He denied that thereafter, he was paid Rs.150/- per month by the respondent. Self stated, Rs.500/- every month were paid to him. He denied that he did not broom the store after September, 2009. Volunteered, he is doing the said work even now. He admitted that his services were never engaged on part time basis or as a casual labourer by his opponent. Again said he was employed as a part time worker. He denied that he is/was not an employee of the respondent/corporation. He also denied that to gain the employment and other undue benefits, he has instituted a phoney petition.

10. Conversely, Shri A.S. Tomar, Area Manager, H.P. State Civil Supplies Corporation Ltd., Dharamshala (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he stated that the petitioner used to do the cleaning work for 5-10 minutes every day. He denied that the petitioner used to be on duty in the office from morning till evening. He admitted that in the month of October, 2009, they started paying Rs.75/- instead of Rs.500/- every month to the petitioner.

11. Exts. PW1/B1 to B10 are the copies of the receipts evidencing that the petitioner was paid Rs.500/- per month on account of the sweeping charges relating to the office and the godown.

12. Ex. PW1/C is the copy of an application moved by the petitioner before the respondent under Section 3 of the Right to Information Act, 2005 for supplying the information.

13. Ex. PW1/D is the copy of the memo dated 29.3.2010 sent to the respondent by the petitioner.

14. Ex. PW1/E is the copy of an appeal under Section 19 of the Right to Information Act, 2005 allegedly instituted by the petitioner before the State Public Information Commissioner, Government of Himachal Pradesh, Shimla against the respondent.

15. Ex. PW1/F is the information supplied by the respondent to the petitioner pursuant to the application moved by the latter.

16. Ex. PW1/G is the copy of the letter/demand notice served upon the respondent by the petitioner.

17. Ex. PW1/H is the copy of the letter dated 23.2.2011 which was written to the respondent by the Labour Inspector-cum-Conciliation Officer, Nurpur.

18. Ex. RW1/B is the copy of the proceedings of the meeting which took place on 09.4.2007 between the Managing Director of the H.P. State Civil Supplies Corporation Ltd. and the workers union. It reveals that in the meeting it was decided that from May, 2007 onwards, Rs.75/- per month should be paid to the persons cleaning the godowns etc.

19. Since the petitioner has knocked the doors of this Court for the grant of various reliefs, a duty is cast upon him to show that the relationship of employer and employee/workman exists between the parties.

20. It is the admitted case of the petitioner that no appointment order/letter was issued in his name by the respondent/corporation. The petitioner (PW1) in his cross-examination admitted

that the presence of every employee of the corporation is marked in the attendance register. His presence was never marked in the said register. He used to do the work of loading and unloading as per the requirement alongwith the others. The payment for the said work used to be made to him and others by the respondent/corporation. He used to clean/broom the store as well. The evidence available on the record clarifies that the size of the store which the petitioner used to clean daily (as per him) is 12"x12". RW1 in his cross examination deposed that the petitioner used to do the cleaning/brooming work for 05-10 minutes every day for which he was made the payment. The copies of the receipts vide which the payment was made to the petitioner are Exts. PW1/B1 to B10. The assertion of the petitioner that he used to remain present in the office from morning till evening has been denied by RW1. As PW1, the petitioner no where stated that he used to attend the office daily for the whole day. There is no cogent and convincing evidence on the file to establish that the services of the petitioner were ever engaged as a casual, contractual, part time labourer or daily wagger by the respondent. Therefore, it cannot be said that the relationship of employer and employee/workman exists between the parties.

21. Otherwise too, Section 13 of the Wages Act lays that the appropriate Government may fix the number of hours of work for normal working day etc. in regard to any scheduled employment as detailed in the schedule (part-1) of the said Act. The Minimum Wages (Central) Rules, 1950 postulate that in the case of an adult, nine hours shall constitute a normal working day. There is not even an iota of evidence on the record to show that the petitioner worked for nine hours a day under the respondent/corporation. As already mentioned, the petitioner (PW1) in his cross-examination admitted that he used to do the work of loading and unloading alongwith the others as per requirement for which he was paid the money by the respondent/corporation. Brooming/cleaning of the store/godown of the size 12' x 12' will not consume nine hours a day.

22. Even if, for arguments sake, it is presumed that there exists relationship of employer and employee/workman between the parties, I will like to say that the petitioner has not placed/exhibited on the file any notification issued by the appropriate Government evidencing that minimum rates of wages payable to the employees have been fixed. Section 3 (1-A) of the Wages Act makes it abundantly clear that 'the appropriate Govt. may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment'. The petitioner has not led any evidence to show that one thousand or more employees were engaged by the corporation for cleaning/brooming its godowns in the entire State.

23. It is not the case of the petitioner that he had worked for 240 days or more in each and every calendar year of his employment or in a block of 12 calendar months preceding the date/month of his alleged termination i.e. October, 2009. Even, it is not his case that at the time of his retrenchment, the persons junior to him were retained in service by the respondent or after his disengagement new/fresh hands have been employed by his adversary. The provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 are not attracted in this case. Not only this, from the pleadings of the parties and the evidence available on the file, it can be gathered that the version of the petitioner is that even after September/October, 2009, he is cleaning/brooming the store/godown of the respondent uptil date. Thus, the question of the final termination of the services of the petitioner by the respondent during the month of October, 2009 pales into insignificance.

24. To my thinking, the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

25. These issues are decided against the petitioner and in favour of the respondent.



## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services as Driver of Shri Vijay Kumar S/O Shri Karam Chand, R/O Village and Post Office Nangal Jariyalan, Tehsil Amb, District Una, H.P. by the Principal, D.A.V. Senior Secondary Public School, Ambota, Tehsil Amb, District Una, H.P. w.e.f. 09-07-2011 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that the respondent/school/institution is working under the control of D.A.V. Managing Committee, Chitragupt Road, New Delhi. Several educational institutions are run by the D.A.V. Managing Committee all over the country. The Managing Committee has its Standing Orders/Service Bye-Laws which are applicable to all the institutions working under it including the respondent/institution. The respondent/school is functioning since the year 1985. Teaching and non teaching staff is working in Ambota school from the year 1985 till date. The respondent/institution has nine school buses. The same are used to pick up and drop the students. Transportation charges are collected by the school from the students by taking into account the distance covered in the bus for coming to and going away from the school. More than ten drivers and ten conductors have been engaged by the respondent for plying the buses. The Motor Transport Vehicle Act is applicable to the respondent/school. An advertisement was issued in the news paper by the respondent for the post of the driver. An interview was conducted on 02.5.2010 at 9.30 A.M. in the school premises by the respondent in which he (petitioner) participated. He was selected by the interview committee for the post of the driver and verbally directed to report for duty before 06.5.2010. He joined as a driver with the respondent on 03.5.2010. No appointment letter was issued in his name by the respondent/institution. He continuously worked as a driver up-to 08.7.2011. The school remained closed from 09.7.2011 to 14.8.2011 due to the summer vacations. In the institution/school, the teaching and non teaching staff have their union/association namely Himachal Pradesh Private School Avem Karamchari Sangh. The head office of the sangh is located at Palampur, District Kangra. The union is affiliated to State Bhartiya Mazdoor Sangh. A demand notice dated 1st June, 2010 was served upon the respondent by the union. Different types of demands have been raised by the union and the matter is pending decision before this Court. He (petitioner) is an active member of the union. During pendency of the general demand notice dated 01.6.2010 served by the union, his (petitioner's) services have been terminated by the respondent without the prior permission of this Court/Tribunal in violation of Section 33-A of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). On 14.8.2011, when the school opened after the summer vacations, he (petitioner) reported for duty. He was not allowed to work by the respondent. The latter remarked that his services are no more required by the institution and the same have already been terminated w.e.f. 09.7.2011. His services have been disengaged due to the activities of the union. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted for the misconduct, if any. During the entire service tenure, his work and conduct was satisfactory. No complaint was received against him by the respondent/management. Before the disengagement of his services, one month pay in lieu of the notice period and the retrenchment compensation as envisaged under Section 25-F of the Act were not paid to him. No inquiry was conducted against him. He worked continuously from 03.5.2010 to 08.7.2011 and completed more than 240 days of work in a block of 12 calendar months preceding the date of his retrenchment. The services of two other drivers namely S/Sh. Sandeep Mankotia and Kewal Singh were also terminated by the respondent/management alongwith him (petitioner). The respondent violated the principles of natural justice and bye-laws of the institution. After his termination, the respondent



inserted an advertisement dated 01.8.2011 in the daily newspaper (Punjab Kesari) for appointing the driver(s) on contract basis. This clearly shows that his services were malafidely disengaged by the respondent/management to deprive him from continuity in service. The act and conduct of the management amounts to unfair labour practice as per Clause 10 of the Vth schedule appended to the Act. He has been victimized due to the union activities only. After his termination, Shri Pardeep Kumar r/o Village Ambota and Shri Sandeep Kumar r/o Village Chalet were appointed as drivers in his place w.e.f. 16.8.2011. Before engaging new/fresh hands, an opportunity of re-employment was not afforded to him as per Section 25-H of the Act. In the service bye-laws of the respondent/institution, the service conditions of the employees have been specified. There is no provision in the service bye-laws to appoint an employee on daily wage, consolidated or contract basis. All the appointments have been specified on regular basis in the regular pay scale as granted by the management to its employees. The pay and benefits of the Central Govt. employees are being given by the management to the employees of the D.A.V. institutions. He (petitioner) is entitled to the pay scale of a driver instead of the minimum wages from 03.5.2010 to 14.8.2011. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Act. As such, he (petitioner) prays that the termination order dated 09.7.2011 passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the full back wages etc.

3. On notice, the respondent appeared. She filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has suppressed the true and material facts from the Court because of which he is not entitled to any relief. The petition is bad for non-joinder of a necessary party. This Court/Tribunal has no jurisdiction to entertain and decide the claim petition.

On merits, the below given facts stand admitted:-

- (a) D.A.V. Managing Committee is running the educational institutions all over India.
- (b) The Managing Committee has framed its Standing Orders/Service Bye-Laws which are applicable to all the institutions working under it (including the respondent).
- (c) D.A.V. Senior Secondary Public School, Ambota, is functioning from the year 1985 onwards.
- (d) The school plies the buses for picking up and dropping the students on payment of the transportation charges.
- (e) More than 10 drivers and 10 conductors have been engaged for running the buses.
- (f) The petitioner was appointed on temporary basis.
- (g) An advertisement was issued in the newspaper for the post of the driver.
- (h) An interview was conducted on 03.5.2010 in the school premises.
- (i) The petitioner participated in the interview and was selected by the interview committee for the post of driver.
- (j) The claimant/petitioner was verbally directed to report for duties before 06.5.2010.
- (k) The petitioner joined the duty on 06.5.2010 and worked as a driver up-to 08.7.2011.

(l) No appointment letter was issued in favour of the petitioner; and

(m) The school remained closed from 09.7.2011 to 14.8.2011 due to the summer recess.

However, it has been pleaded that the petitioner was appointed purely on temporary basis as a driver on 06.5.2010 for 66 days. After 66 days, he was relieved on 10.7.2010. The relieving order was duly signed by the petitioner. A recruitment notice dated 10.8.2010 was issued by the institution (respondent). Such notice was circulated by pasting it on the notice board of the school. Per notice dated 10.8.2010, an interview for the post of driver on temporary basis for the period 13.8.2010 to 31.3.2011 was fixed. The petitioner appeared in the interview. After following the due process of selection, the petitioner was recruited against the temporary post of driver for a period of 231 days. He was relieved on 31.3.2011. The relieving order bears the signatures of the petitioner. After that, the petitioner moved an application for the post of the driver which was purely on contractual basis. Due process of recruitment was followed. The services of the petitioner were engaged for 98 days from 02.4.2011 to 08.7.2011. Appointment letter was issued in the name of the petitioner. He accepted the terms and conditions of the appointment after duly understanding them. The petitioner was employed purely on contract basis from 02.4.2011 to 08.7.2011. The school was then closed owing to the summer vacations. On 01.8.2011, she (respondent) got published an advertisement in the daily newspaper (Punjab Kesari) for the posts of drivers on contract basis. An interview as per the advertisement dated 01.8.2011 was held on 04.8.2011. The petitioner intentionally and willingly did not apply for the post of the driver for the reasons best known to him. On 14.8.2011, the petitioner was never told that his services are no more required by the institution. He (petitioner) was never removed from service as alleged. The appointment of the petitioner was contractual for a fixed/specific period. It automatically came to an end on the completion of the contract period/last working day of the contract. The services of the petitioner stand disengaged in consonance with the bye-laws of the institution. Neither the petitioner has been victimized nor any provision of the Act has been flouted. The fact that the services of S/Sh. Pardeep Kumar and Sandeep Kumar were engaged w.e.f. 16.8.2011 in place of the petitioner has not been specifically denied. The claim petition is false, frivolous and vexatious. The same is not maintainable. The petitioner did not complete 240 days of work as claimed. He is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that no appointment letter was given to him. At the time of the engagement of his services, no terms and conditions of service were settled. No relieving order was ever given to him. The drivers and conductors, who were working with him, were paid the salary and other benefits during the summer vacations. He was deliberately not allowed to join his duties after the summer recess. The advertisement dated 01.8.2011 issued by the respondent and the interview held on 04.8.2011 are/were not to his knowledge.

5. Per order dated 02.01.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 09.07.2011 is illegal and unjustified as alleged? *OPP.*
2. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? *OPR.*

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? OPR.
4. Whether this Court/Tribunal has no jurisdiction to entertain and decide the matter as alleged? OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed.

Issue No. 4 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Vijay Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had joined the service in Ambota School on 06.5.2010. He admitted that on 28.4.2010, the respondent had issued an advertisement in the newspaper to the effect that the posts of drivers and conductors are lying vacant. The willing candidates can apply and take part in the interview. He admitted that pursuant to the said advertisement, he had applied for the post of the driver and joined the service on 06.5.2010. He denied that he was relieved from his duties on 10.7.2010 (before the school closed in the month of July, 2010 for summer vacations). Ex. R1 i.e. copy of the relieving order bears his signatures. He admitted that he signs every document after reading it and understanding its contents. He denied that on 10.8.2010, an interview notice, the copy of which is Ex. R2, was displayed on the notice board of the school by the respondent for employing the drivers and conductors on contract basis after the interview. He refuted that on 10.8.2010 after the interview, he was selected by the interview committee and his services were re-engaged on 13.8.2010. He admitted that he was relieved from his duties on 31.3.2011 and the relieving order Ex. R3 has been signed by him. Further, he admitted that the appointment letter, the copy of which is Ex. R4, was issued in his name by the respondent. He admitted that after he was relieved from his duties on 31.3.2011, the school issued another advertisement for employing the drivers and conductors on contract basis. He controverted that he participated in the interview and was selected. He denied that the joining report dated 02.4.2011, the copy of which is Ex. R5, bears his signatures. He admitted that he was then relieved by the school authorities on 8th July, 2011. He does not know that on 01.8.2011, the respondent/institution had issued an advertisement regarding the fact that the posts of drivers and conductors are lying vacant which are to be filled on contract basis. He feigned ignorance about the fact that the copy of the advertisement dated 1st August, 2011 is Ex. R6. He admitted that he did not apply for the post of the driver as per the news item dated 01.8.2011. He denied that he was not selected as he did not apply for the post of the driver. He even denied that he remained a contractual employee of the school from time to time. He also denied that before he joined the service, the terms and conditions of appointment were explained to him by the respondent/

institution and he joined the duties only after admitting the same to be correct. Further, he denied that to gain the employment and other benefits in a wrongful manner, he has instituted a phoney petition.

9. Conversely, Smt. Rashmi Raj Biswal, Principal of the school (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by her.

In the cross-examination, she denied that on 09.7.2011, the services of the petitioner were disengaged in an unlawful manner. Self stated, the term of contractual appointment had come to an end. The benefit of summer vacations is not given to the non teaching staff of the school. Volunteered, school buses do not ply during such vacations as the children do not come to the school. She denied that the posts of drivers and conductors are permanent as well as the petitioner had worked for more than 240 days. She admitted that in the month of August, 2011, S/Sh. Sandeep Kumar and Pardeep Kumar were appointed as drivers. She stated of her own that an advertisement for conducting the interviews for the posts of drivers was issued in which the petitioner did not participate. She denied that if a person is selected for a particular post after the interview, he is not required to undergo the process of interview once again. Self stated, for the engagement of the contractual employees, the interviews are held time and again. She denied that the services of the petitioner were engaged up-to 31.3.2012 per appointment letter Ex. R4 and by doing the cutting in the said letter, it was mentioned that the services of the petitioner have been engaged only up-to 08.7.2011. Volunteered, the teaching staff is employed up-to 31st March i.e. the end of the session, whereas, the non teaching staff is engaged as per the requirement and the availability of the work. She admitted that an accident case is pending against S/Sh. Sandeep Kumar and Pardeep Kumar. The mishap resulted after their appointment. She denied that the services of the petitioner have been disengaged unlawfully.

10. Ex. RW1/B is the mandays chart/working days details relating to the petitioner.

11. Ex. RW1/C is the seniority list of the drivers and cleaners-cumconductors.

12. Ex. RW1/D is the copy of the proceedings of the meeting held on 5th December, 2001 by the D.A.V. College Managing Committee to consider the norms for placement in next higher scales of drivers working in D.A.V. Public/Model Schools.

13. Ex. RW1/E is the copy of Minutes of LMC meeting of the respondent/school held on 27.4.2010. The LMC (Local Management Committee) unanimously resolved and recommended to appoint fresh transport staff i.e. drivers and conductors from April, 2010 upto the date of beginning of monsoon break every year on trial basis. It was also decided by the LMC that if the work of the drivers and conductors is found satisfactory, their appointment may be extended from mid of August (on reopening of the school after monsoon break) till 31st March, 2010.

14. Ex. RW1/F is the flowchart depicting pay band and grade pay for various posts under 6th Pay Commission.

15. Ex. RW1/G is the statement of account issued by State Bank of India, SME Gagret Branch, Tehsil Amb relating to the petitioner.

16. Ex. PA is the copy of the service rules/bye-laws of the D.A.V. institutions.

17. The petitioner has not placed/exhibited on the record any document evidencing that his services were initially engaged on temporary basis by the respondent w.e.f. 03.5.2010 and he

worked as such up-to 08.7.2011. As PW1, the petitioner stated that he joined the service on 06.5.2010 in the school (though in the statement of claim/demand the date of appointment is mentioned as 03.5.2010). The mandays chart Ex. RW1/B produced by the respondent has not been disputed by the petitioner. It shows that the services of the petitioner were initially engaged by the respondent in the month of May, 2010 and he worked up-to July, 2011. In July 2011, the petitioner worked for 08 days only.

18. It is often said and rightly too that the men may tell lies, but the documents do not. It is the basic law that the documentary evidence as compared to the oral evidence has to be given weight.

19. From the evidence available on the record, it can be gathered that the petitioner worked as a driver with the respondent on contractual basis from time to time. The respondent used to get published advertisement(s) in the newspapers for holding an interview for appointing the drivers and conductors on contract basis. The petitioner used to participate in the interview. After the selection, he used to join his duties and on the completion of the contract period, he (petitioner) was relieved from his duties by the respondent time and again.

20. The petitioner (PW1) in his cross-examination admitted that he was relieved from his duties by the respondent on 8th July, 2011. He also admitted that the appointment letter Ex. R4 was issued in his favour by the respondent. Of course, he denied that the joining report dated 2nd April, 2011 (Ex. R5), which was submitted by him after the issuance of the appointment letter Ex. R4, bears his signatures.

21. Ex. R4 goes to show that the services of the petitioner were engaged as a driver on contract basis from 2nd April, 2011 to 8th July, 2011 on payment of the consolidated salary of Rs.5,171/- per month. As already mentioned, it is the admitted case of the petitioner that he was relieved from his duties by the respondent on 8th July, 2011 i.e. the day on which the term of the contractual appointment came to an end. Even if, in the appointment letter Ex. R4, it has been printed that the appointment of the petitioner shall be up-to 31st March, 2012, the same will not come to his rescue as it has been specifically mentioned in the appointment letter that the term of the appointment of the petitioner is from 2nd April, 2011 to 8<sup>th</sup> July, 2011 only. The respondent (RW1) has categorically stated that the services of the teaching staff are engaged till the end of the session i.e. 31<sup>st</sup> March. The school buses do not run during the summer vacations as the children do not come to the school. The non-teaching staff is employed as per the requirement and the availability of the work. As the buses do not ply during the monsoon break, the question of engaging the services of the petitioner/driver by the respondent from 2nd April, 2011 to 31.3.2012 does not arise.

22. From the evidence available on the file, it becomes clear that the respondent/school used to issue the advertisement(s) in the newspapers from time to time for employing the drivers on contract basis. Walk-in-interview used to be held in which the petitioner used to participate. It is an admitted fact that after the petitioner was relieved of his duties on 08.7.2011, an advertisement dated 1st August, 2011 was got published in the daily newspaper (Punjab Kesari) by the respondent for appointing the drivers on contract basis. Ex. R6 is the copy of the said advertisement. Walk-in-interview was scheduled for 4th August, 2011 at 11.00 A.M. in the school premises for the post of driver. The petitioner did not participate in the interview because of which he was not selected. S/Sh. Sandeep Kumar and Pardeep Kumar took part in the interview. They were selected and appointed as drivers by the respondent on contractual basis in the month of August, 2011. Since the petitioner failed to participate in the selection process, I fail to understand as to how it lies in his mouth to say that his services have been wrongly and illegally terminated by the respondent.

23. The petitioner admits that the appointment letter Ex. R4 was delivered to him by the respondent. The contention of the petitioner that the joining report dated 2nd April, 2011 (Ex. R5) has not been signed by him appears to be false since the joining report was submitted by the petitioner in the school on 02.4.2011 itself after the issuance of the appointment letter Ex. R4 in his name. So far as the rules/bye-laws Ex. PA relating to the employees of D.A.V. Managing Committee are concerned, the same relate to only the regular employees. The evidence adduced by the parties makes it abundantly clear that the petitioner was only a contractual employee/driver who served the respondent/school in different spells from May, 2010 to 8th July, 2011 on payment of the consolidated salary per mensem. The term of contractual employment of the petitioner as per the appointment letter Ex. R4 had come to an end on 8th July, 2011. After that, the petitioner did not participate in the interview for the post of driver on contract basis which took place on 4th August, 2011. Non renewal of the term of the contractual employment does not come within the mischief of the word 'retrenchment' as per clause (bb) of Section 2 (oo) of the Act.

24. That being so, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally dispensed with by the respondent. The latter has not flouted any provision of the Act.

25. To be fair to the Id. authorized representative and the counsel for the petitioner, now I proceed to discuss the rulings cited by them.

- (i) Paramjit Singh vs. Director, Public Instructions & Ors., 2011 LLR 116 (SC). This case relates to the termination of a probationer on account of unsatisfactory performance.
- (ii) G. Venkat Rao vs. Depot Manager, A.P.S.R.T.C., Visakhapatnam Depot, Visakhapatnam and Anr., 2009 LLR 152 (AP). This case pertains to the termination of a bus driver who was given contractual appointment without holding an inquiry against him for the alleged misconduct.
- (iii) M/s. National Aluminium Co. Ltd. vs. Deepak Kumar Panda & Ors., 2002 LLR 928 (SC). This case pertains to a contractual employee whose contractual appointment was not extended as he failed to produce reliable proof of having requisite qualification, whereas, the persons junior to him were absorbed in service on regular basis. There is nothing to show that any person junior to the petitioner (Shri Kewal Singh) has been absorbed in regular service by the respondent/institution.

26. The observations made in the above quoted rulings in no way benefit the petitioner. It seems that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. This issue is decided against the petitioner and in favour of his adversary.

## ISSUE NO. 2

28. Taking into account my findings on issue No.1 above, it can be safely said that the petitioner has suppressed the true and material facts from the Court. For this reason too, he is required to be shown the doors of the Court.

29. This issue is also decided against the petitioner.

ISSUES NO. 3 AND 4

30. Not pressed.

*RELIEF*

(ISSUE NO. 5)

31. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of August, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**

NOTIFICATION

*Shimla, the 21st October, 2013*

**No.HHC/Admn.28 (45)96-Part.**—The Hon'ble High Court of Himachal Pradesh has been pleased to order that Civil Judge (Jr. Division)-*cum*-JMIC, Chopal shall hold Circuit Court at Jubbal for 15 days in a month till the posting of Presiding Officer in the Courts of Civil Judge (Junior Division)-*cum*-JMIC, Jubbal and Civil Judge (Sr. Division)-*cum*-JMIC(I), Rohru.

By order,  
Sd/-  
*Registrar General.*

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**नाम परिवर्तन**

मैं, कली राम सुपुत्र स्व० श्री द्वारका दास चौहान, गांव शील, डाकघर शील, तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश यह सूचित करता हूं कि मैंने अपना नाम कली राम चौहान रख लिया है। अतः मुझे भविष्य में इसी नाम से जाना जाए। सभी नोट करें।

कली राम चौहान  
सुपुत्र स्व० श्री द्वारका दास चौहान,  
गांव शील, डाकखाना शील,  
तहसील रोहडू, जिला शिमला (हि० प्र०)।